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PRESS RELEASE

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For an effective International Criminal Court

Time and again, we have been helpless in the face of the failure of national criminal-law systems to punish the perpetrators of atrocities and those behind them. Genocide, mass executions of political opponents, "ethnic cleansing", systematic rape as a means of "warfare" - the shocking TV reports from Cambodia, Vukovar and Srebrenica, Rwanda and elsewhere are still fresh in our minds. Seldom have I been as shaken as during my visit to Rwanda in 1995, another case where the criminal justice system had totally collapsed and where national courts were either no longer functional or unable or unwilling, to react, often due to the complicity of those in power.

For such cases the system of international criminal justice must be reinforced by a general supplementary jurisdiction. The ad-hoc tribunals for the former Yugoslavia and Rwanda are a step in the right direction, but they can only be temporary solutions. The task is to break the vicious circle of impunity. When those committing atrocities go unpunished, murder and torture will carry no risk, and encourage even more crimes. This is an intolerable and demoralizing situation for the survivors and all those who long for justice. The international community must counter this cynical insanity. An International Criminal Court (ICC) can make a real contribution towards justice and peace. Those who follow in the footsteps of Pol Pot, Karadzic, the mass murderers in Rwanda or indeed Eichmann must face the deterrent risk of having to stand trial before the eyes of the entire world.

However, let me make it clear that I am not proposing a global super-court which will replace national jurisdiction or which can take on cases as it chooses. On the contrary, there is a consensus within the UN that national jurisdiction will continue to have priority. The ICC would only step in if national courts were non-existent or unable or unwilling to prosecute a given serious crime.

I am emphasizing this in order to give this vital project, which is not yet sufficiently known to the German public, the support I think it deserves. This is important because the project is gradually nearing fruition. The main "building-blocks" for an ICC have already been formulated and presented at the negotiations in New York. The major principles which we, together with most of our EU partners and 41 Court-friendly "like-minded" states, support, are:

- The principle that the ICC can only act when national courts are unable or unwilling to prosecute a given serious crime (principle of subsidiarity or complementarity).
- The ICC's jurisdiction is to be limited to (only) four universally-punishable core crimes: genocide, crimes against humanity, war crimes and the crime of war of aggression. The inclusion of war of aggression into the Court's ambit is as yet somewhat uncertain. Germany strongly urges that this crime be incorporated, in line with our Basic Law (Article 26) and our criminal code (sections 80 and 80 a).
- The ICC's Prosecutor is to be empowered to start investigations *ex officio*, i.e. on his or her own initiative.
- The Court's independence will need to be protected against political influence by countries or by the UN Security Council, taking full account of the Council's responsibility under the United Nations Charter.
- There will be no capital punishment, but a maximum of life imprisonment.

In my view it is encouraging that the New York negotiations are no longer about whether the ICC will be established but have now moved on to specific aspects of the ICC's competencies and scope, especially with regard to national courts and the UN Security Council.

Unfortunately it is not yet clear whether, and when, a truly effective ICC will be established. There are still marked differences of opinion, especially on the vital issue of defining the conditions under which the ICC can actually exercise its powers; for example, suggestions have been made that we, and indeed other countries, feel would lead to a weak and powerless ICC. One proposal is that all countries in any way involved in each individual case would have to agree before the ICC could deal with it. Another suggestion is that, after ratifying the statutes, countries would have an almost free choice on whether to accept the ICC's jurisdiction through a special declaration (only) for specific crimes, periods or even crimes committed over a certain period. Finally, there is discussion about whether it would be right for the ICC to require the approval of the Security Council for each individual case while the Council is dealing with a given situation.

Therefore the remaining legal and political hurdles cannot be underestimated. Intensive talks will be necessary before reasonable compromises are achieved. This means that the conference in Rome next summer to create a contractual basis for the ICC must be carefully prepared.

I feel it is vital that this opportunity to take a huge step forward must not be wasted and the project not be watered down. Our aim is clear: A sufficiently effective and credible International Criminal Court which can exercise jurisdiction over the four core crimes when national courts are either not available or not willing or able to prosecute.

This Court will certainly not be able to punish all this world's crimes, especially since it will first have to arrest the accused. But what it would do is nourish the world's hope for justice.

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