

# **INTERNATIONAL CRIMINAL COURT ASSEMBLY OF STATE PARTIES**

## **Remarks of Kenneth Roth Executive Director, Human Rights Watch**

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Distinguished Delegates, this assembly marks a turning point for justice and the rule of law. Too many atrocities have been committed by ruthless leaders who calculated that they could get away with mass murder. They have reasoned, quite accurately, that a bit of violence and intimidation is all it takes to shut down any possibility of national prosecution. That impunity stood as an invitation to much of the death and suffering of our time.

The International Criminal Court will help break that deadly logic. It represents a global vow that, whatever a ruthless leader does to undermine his national justice system, the ICC will stand beyond his reach, ready to prosecute his acts of violence and interrupt his plans for impunity.

The Rome Treaty establishing the ICC is a tremendous advance for the human rights cause. And it comes not a moment too soon. After our vows of "Never again!" were broken in Bosnia, Rwanda, Cambodia, and Iraq, after slaughter and atrocities in countless countries around the globe, a court has finally been established that stands ready to prosecute and condemn the authors of these crimes anywhere in the world.

Yet this moment of triumph and celebration is no time for complacency. There is an urgent need to redress today's atrocities and, if possible, deter tomorrow's would-be killers. There is a need to ensure that the court upholds the highest standards of fairness and justice. There is a need to elect a prosecutor and judges of unimpeachable integrity. And there is a need to fend off new challenges to the court, including from the United States government.

If the Bush administration has its way, it would rip up the Rome Treaty and substitute its own version – what we might call the Washington Treaty. The Rome Treaty reflects a vision of universal justice. The Washington Treaty reflects the view that justice is for everyone else, not the superpower. The Rome Treaty reflects a global order maintained by troops operating under enforceable international standards. The Washington Treaty sees no role for enforceable international standards. The Rome Treaty recognizes the need for an independent court of last resort when national justice systems fail. The Washington Treaty sees the superpower's justice system as infallible.

These competing visions are clearest in the current dispute over Article 98 agreements. Article 98 of the Rome Treaty recognizes agreements to resolve competing obligations among member states. When a government that sends its national to another state and the

government that receives him both have competing desires to prosecute, Article 98 permits them to order their claims, to decide whose national prosecution goes first. But if Article 98 is to remain true to the Rome Treaty, it must respect the fundamental principle that ICC oversight of national prosecutions is essential to guard against impunity. That is, no ICC suspect should ever be sent under Article 98 to a government that does not recognize the ICC's basic obligation to guard against sham investigations or prosecutions.

By contrast, the Washington Treaty would permit impunity agreements. It would allow the surrender of an ICC suspect to his national authorities on the basis of a promise to investigate and prosecute that the ICC would be unable to review. That would return us to the legal regime that gave us Augusto Pinochet, Idi Amin, and Pol Pot. The whole point of the ICC is never to trust unverified national pledges to bring offenders to justice.

No one should confuse the impunity agreements of the Washington Treaty with Article 98 of the Rome Treaty. It is a dangerous violation of the Rome Treaty to agree to surrender any ICC suspect to a government that does not recognize the critical oversight role of the ICC.

This dispute is not about the unlikely possibility that American soldiers will find themselves in the dock. What is at stake is the very legitimacy of the ICC. As the Bush administration is fully aware, a court that exempts the world's superpower risks losing its legitimacy. That is the goal of certain extremists in Washington who seek to exercise the United States' unprecedented military power without the inconvenient constraints of international law – or at least international law interpreted by anyone other than themselves.

No one pretends that it is easy to stand up to superpower pressure. The threats and arm-twisting can be intense. The temptation to accept unprincipled compromises is substantial. But the challenge of defeating impunity was also large. We stand today on the threshold of a new era in international law enforcement because so many nations of the world banded together in defense of principle. What would have been difficult for any single nation is a triumph for many nations that have acted together.

Similar collective action is needed to defeat new challenges to the scope and legitimacy of the ICC. At a time when the U.S. government is the supplicant, when it is seeking global support for its military plans, the nations of the world should at the very least insist that military action by anyone be waged under independently enforceable human rights standards.

Distinguished Delegates, those who have suffered horrible crimes have waited far too long to extend the rule of law to their assailants. Their hope lies in the Rome Treaty, to which you and your governments have worked long and hard to give life. We must not, in this moment of triumph, let the Rome Treaty be rewritten as the Washington Treaty.