



Judge Philippe Kirsch
President of the International Criminal Court

Address to the United Nations General Assembly

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(English only version)

Thank you Madam President.

I am pleased to be able to present the second annual report of the International Criminal Court (ICC) to the United Nations.

In my remarks, I would like to speak about:

- First, where the Court stands today in its activities; and
- Second, the Court's place within an emerging system of international justice.

I. The Court Today

I will start with the Court today.

Since the Report of the Court was submitted, two additional States have joined the Rome Statute. Comoros ratified the Statute on 18 August. St. Kitts and Nevis acceded to the Statute on 22 August. 102 States have now ratified or acceded to the Statute.

This year marked three years of the Court's operations. The terms of six of the first judges of the Court came to an end. In January, the States Parties to the Rome Statute, meeting here in New York, elected six judges. As we enter the next triennium, the Court is moving towards its first trials.

Four situations have been referred to the Court. The Prosecutor is conducting investigations in three of these situations – northern Uganda, the Democratic Republic of the Congo, and Darfur, Sudan.

These investigations are taking place within the framework of a prosecutorial strategy, a new version of which was adopted by the Office of the Prosecutor this year in light of the Office's experience. The Office of the Prosecutor has the exclusive responsibility to receive and analyze referrals, as well as communications from other sources. The Pre-Trial Chambers may take certain measures related to investigations, for example reviewing the decision of the Prosecutor not to investigate a situation referred by the Court or authorizing an investigation *proprio motu*. However, the Prosecutor acts independently as a separate organ of the Court in evaluating the available information and deciding whether to open an investigation *proprio motu* or to request an arrest warrant. As such, the prosecutorial strategy, while harmonized with the Court's strategic plan, reflects the Office of the Prosecutor's independence.

The first warrants of arrest were issued by the Court in 2005 in the situation in northern Uganda. The Office of the Prosecutor recently indicated that DNA tests have confirmed that one of the five persons subject to warrants is deceased. The other four warrants remain outstanding. Judicial proceedings have continued before the Pre-Trial Chamber on issues such as monitoring the status of execution of arrest warrants and the unsealing of confidential documents.

In the situation in the Democratic Republic of the Congo, in March 2006 Mr. Thomas Lubanga Dyilo was surrendered to the Court pursuant to an arrest warrant issued in February. Since Mr. Lubanga's surrender, proceedings have been conducted before the Pre-Trial Chamber on a wide range of issues, including the disclosure of evidence to the defence, the participation of victims in the proceedings and the protection of victims and witnesses. The Pre-Trial Chamber is addressing complex legal provisions of the Rome Statute that are being interpreted in practice for the first time. One of the significant areas of activity has been balancing the disclosure of evidence necessary for the defence to prepare its case with the need to redact information to protect victims and witnesses. Over 400 documents and more than 5000 pages of information have been disclosed or made available for inspection by the Prosecutor to the defence. Each page had to be reviewed for redactions necessary to protect the security of victims and witnesses.

Before the case can proceed to trial, the Pre-Trial Chamber must confirm the charges. An initial hearing to confirm the charges was postponed in order to ensure measures were in place to protect the security of witnesses. The hearing was subsequently postponed a second time out of concern for the rights of the accused and the need for the defence to be adequately prepared for the hearing. The Court is committed to expeditious proceedings. Such proceedings must also ensure the full protection of the rights of the accused and meet the Court's obligations to protect victims and witnesses. This concern is linked to the situation of the Court in the field, to which I shall return shortly.

The first pre-trial proceedings have been conducted in the situation in Darfur, Sudan. They have again dealt with issues such as the security of victims and witnesses. In addition, the Prosecutor has briefed the Security Council that local conditions have made it impossible to investigate in Darfur. Instead, the investigation is taking place in other countries.

In 2006, the Appeals Chamber was faced with issues such as the scope of appellate review and admissibility. The rulings of the Appeals Chamber constitute the final interpretations of provisions of the Rome Statute on issues that have been subject to litigation before the Pre-Trial Chambers.

In the last year, the Prosecutor announced that two situations which had been analyzed had been dismissed. The Prosecutor is analyzing five other situations for jurisdiction and admissibility. Two of these have been made public. These are the situation in the Central African Republic, referred by that State Party and the situation in Côte d'Ivoire, a non-State Party which has accepted the jurisdiction of the Court.

Turning now to operational aspects, the focus of the Court's activities over the past year was in the field. Security in the field continues to be an omnipresent concern. The Court is operating in circumstances of ongoing conflict or other potentially volatile situations. The extent of the challenges facing the ICC is unlike anything experienced by other courts or tribunals. Our activities must be carried out in such a way as to ensure the safety of staff, victims, witnesses and others at risk. At times, this has caused delays in Court activity. Missions to the field have been cancelled at the last moment due to rapidly changing events on the ground. Earlier this year rising violence forced the temporary closure of the Court's field office in Chad, which is operated in connection with the investigation into Darfur,

Sudan. The Office has since been reopened. Operating in the midst of ongoing conflicts also requires additional precautions such as arranging standby medical evacuation capacity.

The Court maintains substantial fixed presences in the Democratic Republic of Congo, Uganda and Chad. These offices assist the Court in carrying out functions such as witness protection, victims' participation and reparations and support to defence counsel. One of the most important of the Court's field activities is outreach to local populations.

An integral part of justice is that it is seen to be done. The ICC, its role and its activities must be understood. This is important for its own sake, but also for facilitating necessary cooperation. The Court continued to build on its outreach efforts in the situations in northern Uganda and the Democratic Republic of the Congo. Outreach teams are in place in both countries, and staff from The Hague also travel to the field on outreach missions. The Court's outreach included both general awareness-building and programs targeted specifically to certain groups such as victims, counsel or the media. The situation in Darfur has made outreach more difficult, as the Court is not able to operate within Darfur.

Outreach is a necessary tool to ensure that judicial proceedings are understood locally. This can also be done by holding proceedings where crimes were committed. The Rome Statute allows the Court to sit outside of The Hague. In the course of the General Assembly debate last year, States expressed the wish that the Court carry out, in due course, some proceedings in the field. The decision to do so will have to be taken by the judges in accordance with the Statute and Rules of Procedure and Evidence. The Court is preparing for future proceedings to be held *in situ*, subject to acceptable conditions, in particular security. An estimate of the resources needed to conduct hearings *in situ* has been included in the 2007 budget. In the longer term, having an appropriate geographical distribution of activities is one of the important objectives in the Court's strategic plan.

II. The Emerging System of International Justice

I would like to turn now to the Court's role within the emerging system of international justice.

A. Cooperation with the ICC

Our experience over the past year has reinforced the importance of cooperation to the Court. I have already mentioned that the Court has arrest warrants outstanding. The Court does not have the power to arrest these persons. That is the responsibility of States and other actors. Without arrests, there can be no trials.

There are many other ways in which States can provide support to the Court's efforts. They may provide evidence in their possession or facilitate the Court's access to other evidence. The Court's ability to conduct investigations and trials will depend on the extent and quality of information it can access. States may assist the Court in the questioning of persons, execution of searches and seizures, or identification and tracing of assets. Several States

have entered into agreements on the relocation of witnesses. A broad network of such agreements is necessary to ensure witnesses can testify before the Court without fear of repercussions, taking into account the witnesses' physical and psychological well-being. The cultural adaptation of witnesses is a vital element of successful relocation. For that reason it is particularly useful to have agreements with States where witnesses will be able to more easily adapt culturally during their relocation. Under the Rome Statute, sentences of persons convicted by the Court will be served in States willing to accept these persons. One State has concluded a bilateral arrangement with the Court setting out a general framework for the enforcement of sentences. Logistical and operational support can also be of significant assistance to the Court. For example, France facilitated the transfer of Mr. Lubanga by providing the use of an airplane.

In addition to States, international and regional organizations contribute vitally to enabling the work of the Court.

The support of the United Nations has been key to enabling the Court's activities, especially in the field. The United Nations peacekeeping mission in the Congo has notably provided logistical support to the Court, such as accommodation and transport. The UN Security Council's Sanctions Committee facilitated the surrender of Mr. Lubanga to the Court by waiving the travel ban against him so that could be transferred to The Hague.

Effective cooperation between the Court and the United Nations requires coordination and information sharing. The Court highly values the opportunity to report annually on our work to the General Assembly. We regularly coordinate and share information with the UN by other means throughout the year. I am pleased to announce that the Court has established a liaison office here in New York to facilitate cooperation. The head of the liaison office recently assumed her responsibilities.

Regional organizations may provide similar forms of support to the Court as States or the UN. The assistance of regional organizations is particularly important when they are active in the same area as the Court is investigating. A cooperation agreement with the European Union was concluded in April. We look forward to soon concluding an agreement with the African Union. The Prosecutor and I participated in a meeting of the African Union Peace and Security Council in Addis Ababa this summer. Representatives of the ICC, including myself, have on several occasions participated in meetings of the Organization of American States, and we are strengthening these contacts. We also have developed our relationships with other regional organizations and look forward to further expanding on these ties in the near future.

B. Complementarity and Interdependence

This emerging system of international justice extends beyond cooperation with the ICC to embrace other institutions involved in putting an end to impunity.

We must remember that the primary responsibility for investigating and prosecuting international crimes – like all crimes – belongs to national courts. The ICC only comes into

the picture when national courts are unwilling or unable genuinely to investigate or prosecute crimes. Putting an end to impunity and preventing future crimes may require the strengthening of national capacities to deal with crimes.

The ad hoc tribunals and other courts such as the Special Court for Sierra Leone also have similar objectives to the ICC. These courts and tribunals have increasingly assisted each other in carrying out their respective mandates. The ICC is providing facilities, services and support to enable the Special Court for Sierra Leone to conduct the trial of Charles Taylor in The Hague. The trial is being conducted by the Special Court, and all costs must be paid by the Special Court in advance. The different courts and tribunals regularly exchange information. Last weekend, the Office of the Prosecutor of the ICC, together with the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, jointly hosted the Third Colloquium of International Prosecutors. The Registrars of the different courts and tribunals also hold an annual meeting.

III. Conclusion

The General Assembly has previously stressed that bringing to justice perpetrators of war crimes and massive violations of human rights and humanitarian law should contribute significantly to prevention. In his recent Progress Report on the Prevention of Armed Conflict, the UN Secretary-General observed that the ICC is already having an effect in deterring these crimes (*A/60/891, para. 41*). We are now also seeing specific indications from different sources that the ICC is having an impact on situations where it is active. As proceedings progress, the deterrent effect of the ICC should increase over time, as envisioned in the preamble to the Rome Statute.

In his Report on the Work of the Organization over the past year, the Secretary-General stated that the establishment of the ICC “demonstrated the international community’s commitment to a permanent and universal mechanism to ensure that as regards those most serious crimes, impunity will not be tolerated.” (*A/61/1, para. 108*).

The ICC has done and will continue to do its part in putting an end to impunity by fulfilling its mandate as provided by the Rome Statute. For its part, the international community must see that its fundamental commitment to ending impunity is upheld and ensure the support and cooperation needed.