

**Cour
Pénale
Internationale**



**International
Criminal
Court**

**Judge Sang-Hyun Song
President of the International Criminal Court**

Address to the United Nations General Assembly

*New York
28 October 2010*

Madame President,
Excellencies,

It is a great honour for me to address the United Nations General Assembly for the second time as the President of the International Criminal Court and to present the Court's sixth annual report before this distinguished forum.

The past year has been very eventful for the Court, including the first Review Conference of the Rome Statute, the first arrest warrant for the crime of genocide, the first situation brought to the Court at the Prosecutor's own initiative, the start of the second trial, the voluntary appearance of three suspects before the Court, as well as the first decision declining to confirm charges against a suspect. Since my last report to you, four more nations have joined the ICC, bringing the total number of States that have ratified or acceded to the Rome Statute to 114. I warmly welcome Bangladesh, Seychelles, Saint Lucia and Moldova into the ICC family of countries dedicated to justice and ending impunity.

Despite the impressive progress that has been achieved, significant challenges remain before us, especially with respect to the cooperation of States, which is the backbone of the ICC's work.

Since you have the ICC's written report before you, I will focus my remarks on a few key areas:

First, I will discuss the landmark event of this year, the Review Conference of the Rome Statute held in Kampala, Uganda.

Second, I will give an update on the activities of the Court, including a discussion of the challenges posed by state cooperation and a review of our work with respect to victims.

And third, I will discuss the progress towards global impact of the Rome Statute.

The first Review Conference of the Rome Statute was held from 31st of May to the 11th of June this year in Kampala. In accordance with the Statute, the Review Conference was convened by the United Nations Secretary-General. “The old era of impunity is over”, he said in his memorable opening speech, and continued, “In its place, slowly but surely, we are witnessing the birth of a new Age of Accountability”.

The main agenda item was the possible amending of the Statute with respect to the crime of aggression which States were unable to agree upon at the Rome Conference in 1998. An agreement was reached on the last day with the adoption of a definition of the crime of aggression which is based on the UN General Assembly Resolution 3314 of 1974. The Court’s ability to exercise jurisdiction over the crime of aggression will be subject to a new decision to be taken by States Parties after 1 January 2017.

A pledging ceremony and a stocktaking exercise were held in Kampala, creating significant potential for further enhancing the effectiveness of the Rome Statute system. The three key areas which require continued attention are cooperation with the ICC, strengthening of national jurisdictions under the principle of complementarity and global ratification of the Rome Statute.

The Review Conference was a powerful reminder of the strong connection between the United Nations and the ICC. Several high-level UN officials participated in the stocktaking on international criminal justice in Kampala, drawing attention to the invaluable role which the United Nations plays in promoting the rule of law, peace and justice in the world.

Let me now proceed to the update on the activities of the Court.

The first trial of the ICC, that of Mr Thomas Lubanga Dyilo, is approaching its conclusion. He is charged with the recruitment of child soldiers under 15 years of age in forces under his command and using them in hostilities in the Democratic Republic of the Congo. Mr. Lubanga's defence commenced the presentation of its evidence on 7 January 2010.

The second trial before the ICC started on 24 November 2009. This is the case of Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui, two alleged former military leaders charged with murder, rape, attacks on civilians, the use of children in hostilities and a number of other war crimes and crimes against humanity allegedly committed in the Democratic Republic of the Congo.

In the situation in the Central African Republic, Mr. Jean-Pierre Bemba Gombo is charged with murder, rape and pillage in his alleged capacity as a military commander. His trial is now ready to start, after the Appeals Chamber last week dismissed a challenge against the admissibility of the case before the ICC. The trial will begin on 22 November 2010.

This decision is but one example of the growing body of jurisprudence at the ICC which is fortifying the Court's legal stability.

In the situation in Darfur, Sudan, which was referred to the ICC by the United Nations Security Council, three persons have appeared voluntarily before the ICC. In one case, that of Mr. Bahr Idriss Abu Garda, the Pre-Trial Chamber declined to confirm the charges against the suspect. This clearly demonstrates the total independence of the judges and the Office of the Prosecutor from each other. The hearing on the confirmation of charges against two other persons, Mr. Abdallah Banda Abakaer Nourain and Mr. Saleh Mohammed Jerbo Jamus, is scheduled to commence on 8 December 2010.

A new investigation was opened during the past year, concerning the 2007-2008 post-election violence in Kenya. Seven years after the ICC's establishment, this is the first situation brought to the Court at the Prosecutor's own initiative, with subsequent authorisation by the Pre-Trial Chamber.

Of the other four situations before the ICC, three were referred to the Court by the situation countries themselves and one by the Security Council.

Beyond the growing number of judicial proceedings unfolding in the ICC's courtrooms, the Prosecutor is continuing his investigations into the five situations before the Court. He publicly announced that he would present two new cases in the Kenya situation before the end of the year. He is also pro-actively gathering and analyzing information on crimes which may have been committed within the jurisdiction of the Court in other situations. The Prosecutor has publicly announced that he is looking into situations concerning Colombia, Georgia, Afghanistan, Côte d'Ivoire, Palestine and Guinea.

Madame President,

Let me now turn to the question of cooperation with the ICC which is of paramount importance to the Court's ability to fulfil its mandate.

I am delighted to report that less than three weeks ago, the French authorities apprehended Mr. Callixte Mbarushimana, a Rwandan citizen and an alleged senior member of the armed group FDLR, suspected of being criminally responsible for a wide range of crimes against the civilian population in the Kivu region of the Democratic Republic of the Congo. His transfer to the seat of the ICC is pending.

The arrest of Mr. Mbarushimana was an excellent example of multilateral collaboration leading to concrete results in the pursuit of international justice. In addition to France, cooperation was provided by other States Parties as well as non-Parties, including Germany, the Democratic Republic of the Congo and Rwanda.

At the same time, the ICC Prosecutor provided cooperation to the German authorities in their investigation of other alleged senior leaders of the FDLR, who were arrested in Germany last year. This is a clear example of positive complementarity in action.

After years of continuous violence in the Democratic Republic of the Congo, these latest developments provide hope for more stability and the prevention of future crimes, which is the ultimate goal of the Rome Statute system. However, another commander sought by the ICC, Mr. Bosco Ntaganda, is still reported to be at large in Goma, allegedly contributing to ongoing crimes. This arrest warrant must be executed and I call on all relevant actors to cooperate to that effect.

In total, arrest warrants issued by the ICC are outstanding against eight persons. This is having a devastating effect on victims and the communities affected by the crimes under the Court's jurisdiction.

Four of the persons avoiding justice are alleged commanders of the Lord's Resistance Army sought in connection with the situation in Uganda; the warrants against them have been outstanding for more than five years. I urge the international community to intensify its efforts to bring these persons to justice.

In the situation in Darfur, two arrest warrants are pending against Mr. Omar Hassan Ahmad Al-Bashir, since the Pre-Trial Chamber in his case issued the first warrant of arrest for genocide before the ICC on 12 July 2010. Finally, the arrest warrants issued in 2007 against Mr. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman still have not been acted upon and, on 25 May 2010, the ICC's Pre-Trial Chamber decided to refer the matter of Sudan's non-compliance with the obligation to cooperate with the ICC to the United Nations Security Council.

Additionally, in August, the ICC's Pre-Trial Chamber informed the Security Council as well as the ICC's Assembly of States Parties of Mr. Al-Bashir's visits to two States Parties, Kenya and Chad despite the outstanding ICC arrest warrants against him.

The transmittal of this question to the Security Council and the Assembly of States Parties underlines the purely judicial nature of the ICC which is safeguarded by the option to refer matters with potential political implications to the appropriate political bodies for their consideration.

The situation with respect to the outstanding arrest warrants is deeply troubling. As you know, the ICC is completely reliant on state cooperation in the enforcement of its orders and decisions. If States do not provide the cooperation necessary for the Court's functioning in accordance with their legal obligations, the ICC will not be able to fulfil its mandate and impunity will continue to flourish.

Madame President,

The ICC's engagement with victims is of unprecedented value and is steadily expanding. One of the greatest innovations of the Rome Statute was to allow the participation of victims in the proceedings even when not called as witnesses. In the countries where we have active cases, the ICC's outreach programme communicates with the local population, informing the victims of their rights and helping communities generally understand the Court's mandate and proceedings.

We also have the Trust Fund for Victims, which was established pursuant to the Rome Statute to collect voluntary contributions, to administer reparations ordered by the ICC as a result of the trials as well as to provide physical or psychological rehabilitation and other support for the benefit of victims and their families even before the judicial proceedings are concluded.

This strikes me as a most important quality of the Trust Fund for Victims: the ability, at a very early stage, to engage in support of the victims of crimes in situations before the Court.

At present, the Fund is reaching out to over 40,000 direct beneficiaries and many more indirect beneficiaries in the Democratic Republic of the Congo, northern Uganda, and as of next year, the Central African Republic.

In Ituri, for example, the Fund has been supporting an accelerated learning programme and a day care centre for girls who were abducted, raped and who gave birth while in captivity. For these young women, their babies can be a source of stigma, an impediment to their education and a constant economic burden. The Trust Fund supported school gives these girls a chance to regain the education they lost while in captivity and develop a positive bond with their children.

This example demonstrates the unique role of the Trust Fund at the crossroads of international justice and humanitarian concern for victims, acknowledging their plight and restoring their human dignity. I consider the actions of the Fund to be highly relevant to the ICC's overall mission and worthy of the continued financial support of States and other donors.

Madame President,

As the UN Secretary-General said at the opening of the Review Conference, the ICC must have universal support if it is to become an effective deterrent. While it is remarkable that as many as 114 States from all regions of the globe have joined the Statute, the fact remains that large parts of the world's population are for the time being outside the protection offered by the ICC system.

I hope that non-States parties will consider possible ratification of the Statute with an open mind. The lack of legal capacity should not be an obstacle for ratification; technical assistance for that purpose is widely available from a variety of sources. Joining the ICC not only sends out a strong signal of commitment to the rule of law, peace and justice, but it also gives the State in question the right to participate fully in the ICC's work. Elections for the post of the Prosecutor and six vacancies of Judges will be held in 2012 – now would be an excellent time to join and shape the future course of the ICC's development.

Let me recall that the ICC is not intended to substitute national justice systems. The Rome Statute makes it very clear that national criminal jurisdictions have the primary responsibility for the prosecution of international crimes, the ICC being merely a safety net. The domestic justice systems of each State should be so well equipped to deal with international crimes that they serve as the main deterrent worldwide.

This, I believe, is an objective shared by all States, whether they are parties to the Rome Statute or not.

The Review Conference created significant momentum for broadening and deepening the Statute's influence with respect to national jurisdictions, but this is merely the beginning. Far more needs to be done, and I am glad to see discussion starting on the mainstreaming of Rome Statute issues into rule of law and judicial reform capacity building. The United Nations is uniquely placed to facilitate that process.

Madame President,
Excellencies,

Another momentous year is behind us and the ICC has continued its progress on many fronts. This would not have been possible without the relentless commitment of the international community for which I am deeply grateful.

Let us continue to build on our shared values so that we may move a step closer to eradicating impunity for the gravest crimes of concern to all of humanity.

Embrace the ICC – it is your court.

Thank you very much.