



**Judge Philippe Kirsch**  
**President of the International Criminal Court**

**Address to the United Nations General Assembly**

**9 October 2006**

(in languages of delivery)

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 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. Le système émergent de justice internationale

Je souhaiterais maintenant évoquer le rôle de la Cour au sein de ce système émergent de justice internationale.

### A. La coopération avec la CPI

L'expérience de ces dernières années a renforcé l'importance que revêtait la coopération pour la CPI. J'ai déjà indiqué que quatre mandats d'arrêt délivrés par la Cour attendent d'être exécutés. La Cour n'a pas le pouvoir d'arrêter les personnes concernées ; cette responsabilité revient aux États et à d'autres acteurs. Ce soutien est évidemment essentiel. Sans arrestations, il ne peut pas y avoir de procès.

Les États peuvent apporter leur soutien à la Cour de nombreuses autres manières. Ils peuvent fournir des éléments de preuve qui se trouvent en leur possession ou permettre à la Cour d'accéder plus facilement à d'autres preuves. La capacité de la Cour de mener des

enquêtes et de conduire des procès dépendra de la quantité et de la qualité des informations qu'elle pourra obtenir. Les États peuvent également aider la Cour à procéder à des auditions de personnes, à des perquisitions et des saisies, ou à l'identification et à la localisation d'avoirs. Par ailleurs, plusieurs États ont maintenant signé des accords relatifs à la réinstallation de témoins. Il est essentiel d'établir un vaste réseau d'accords de ce type pour s'assurer que les témoins puissent déposer devant la Cour sans craintes de représailles, en tenant compte de leur bien-être physique et psychologique. La réinstallation réussie de ces témoins passe par la possibilité pour eux de s'intégrer. C'est pourquoi il est particulièrement utile de conclure des accords avec des États dans lesquels il sera plus facile aux témoins de s'adapter culturellement. Le Statut de Rome prévoit aussi que les personnes condamnées par la Cour purgeront leur peine dans les États qui acceptent de les recevoir. Un État a signé avec la CPI un accord bilatéral définissant un cadre général pour l'exécution des peines. Enfin, un soutien logistique et opérationnel peut se révéler particulièrement utile pour la Cour. Ainsi, la France a facilité le transfèrement de M. Lubanga en mettant un avion à la disposition de la Cour.

Outre les États, les organisations internationales et régionales contribuent de manière essentielle au travail de la Cour.

Le soutien de l'ONU a été vital pour la conduite des activités de la Cour, en particulier sur le terrain. La Mission de maintien de la paix des Nations Unies en République démocratique du Congo a apporté une assistance logistique à notre institution, en matière d'hébergement et de transport notamment. Le Comité des sanctions du Conseil de sécurité a facilité la remise de M. Lubanga à la Cour en levant l'interdiction de voyager qui le frappait, de sorte qu'il puisse être transféré à La Haye.

Une coopération efficace entre la Cour et l'ONU requiert la coordination des efforts entrepris et le partage d'informations. La Cour apprécie grandement la possibilité qui lui est offerte de rendre compte chaque année de son travail devant l'Assemblée générale. Nous collaborons régulièrement avec l'ONU et partageons des informations avec elle par d'autres moyens tout au long de l'année. Je suis heureux d'annoncer que la Cour a établi un bureau de liaison ici, à New York, pour faciliter cette coopération. La responsable de ce bureau est d'ailleurs entrée en fonction récemment.

Les organisations régionales peuvent fournir à la Cour un soutien similaire à celui que lui apportent les États ou l'ONU. Ce soutien est particulièrement important lorsqu'il s'agit d'organisations actives dans les régions mêmes où la Cour enquête. Un accord de coopération a été signé en avril avec l'Union européenne, et nous espérons de conclure bientôt un accord avec l'Union africaine. Le Procureur et moi-même avons participé cet été à une réunion avec le Conseil de paix et de sécurité de l'Union africaine à Addis Ababa. Comme plusieurs autres représentants de la CPI, j'ai également participé à plusieurs reprises à des réunions avec l'Organisation des États américains, et nous nous efforçons de renforcer ces contacts. Nous nous sommes également mis en rapport avec d'autres organisations régionales et espérons consolider ces liens dans un avenir proche.

## B. La complémentarité et l'interdépendance

Ce système émergent de justice internationale s'étend au-delà de la coopération avec la CPI, puisqu'il tend à intégrer d'autres institutions qui ont vocation à mettre un terme à l'impunité.

Nous devons garder à l'esprit que c'est aux juridictions nationales qu'il incombe au premier chef d'enquêter sur les crimes internationaux — comme sur tout autre crime — et d'en poursuivre les auteurs. La CPI n'intervient que lorsque ces juridictions nationales n'ont pas la volonté ou sont dans l'incapacité de mener véritablement à bien l'enquête ou les poursuites. Mais pour mettre un terme à l'impunité et prévenir la commission d'autres crimes, il peut être nécessaire d'accroître les ressources dont les États disposent pour lutter contre ces crimes.

Les tribunaux ad hoc et d'autres juridictions telles que le Tribunal spécial pour la Sierra Leone ont également des objectifs similaires à ceux de la CPI. De plus en plus, ils s'assistent mutuellement pour mener à bien leurs missions respectives. La CPI met à la disposition du Tribunal spécial pour la Sierra Leone les locaux et services lui permettant de tenir à La Haye le procès de Charles Taylor, procès dont les dépenses totales doivent être réglées à l'avance par le Tribunal spécial. Les différentes cours et tribunaux échangent régulièrement des informations. Le week-end dernier, le Bureau du Procureur de la CPI et le Bureau du Procureur du Tribunal pénal international pour l'ex-Yougoslavie ont accueilli ensemble le troisième colloque des procureurs internationaux. Les greffiers des différentes juridictions internationales se réunissent également tous les ans.

## 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.