



**Judge Silvia Fernández de Gurmendi
President of the International Criminal Court**

Remarks to the United Nations General Assembly delivering the Court's annual report

Check against delivery

*New York
30 October 2017*

Mr President,
Excellencies,
Distinguished delegates,

Quisiera aprovechar esta oportunidad para presentar mis respetuosos saludos a las delegaciones de habla hispana antes de continuar con la presentación de mi informe en los dos idiomas de trabajo de la Corte, que son el francés y el inglés. *[I would like to present my respectful greetings to the Spanish-speaking delegations, before continuing my presentation in the two working languages of the Court, which are French and English.]*

I am honoured to address this assembly to present the Court's annual report to the United Nations for the third and last time as my mandate as President and Judge of the International Criminal Court will expire in March next year.

When I first addressed you two years ago, following my election as President, I emphasized that the main priority I had set for my mandate was to enhance the Court's effectiveness and efficiency.

I thought then and remain convinced today that cooperation is linked to performance. The Court must constantly strive to improve its governance as well as the speed and quality of the justice that it delivers in order to enhance its credibility and foster support.

I am glad to say that much effort has been put into this in all organs of the Court and much progress has been made.

The judges have sought to improve and accelerate judicial proceedings through a collective assessment of the legal framework and methods of work. Three retreats of judges have been a central vehicle to foster the development of a more cohesive judicial culture among the judges of the Court, who come from different backgrounds, legal systems and traditions. They have served to channel collegial discussions across chambers and divisions, allow them to revise entire phases of the judicial cycle and generate a number of concrete initiatives to amend where necessary the legal framework, practices and methods of work.

The third and last retreat took place in Krakow, Poland, this year, focusing on appeals issues. The two previous ones respectively held in 2015 and 2016 in Nuremberg, Germany, and Limburg, the Netherlands, had focused on pre-trial and trial issues.

These collective discussions were unprecedented. For the first time at the Court, all judges accepted that judicial independence within their respective cases and chambers was in no way incompatible with exchanging views and experiences with a view to identifying best practices and recommending common response to some challenges. These ground-breaking efforts have generated a number of initiatives and produced several concrete outcomes. A publicly available Chambers Practice Manual seeks to harmonize the approach to certain matters by spelling out how certain procedural phases should be carried out. To the extent possible, judges have sought to improve the Court's work through practice rather than amendments to the legal framework, which should remain exceptional. However, certain specific amendments have been introduced to the Rules of Procedure and Evidence and Regulations of the Court. We have also improved the structure of the legal support staff at the Court.

The reforms we have put in place are already having a visible impact in our courtrooms and cases, including a clear and drastic reduction of the time required for some phases or aspects of proceedings.

We have also made progress in the development of performance indicators and a third report will be produced at the end of this year which will be accompanied by a fuller set of data, which, we hope will help illustrate the work of the Court across cases.

Enhancing the efficiency of Court becomes critical at a time in which the Court is very busy at various stages of proceedings, and the heavy workload is likely to continue in the future. As said, much progress has been achieved in this regard although, of course, much more is required. The Court is not perfect. But it is working, it has matured, and it is delivering.

As part of improving its governance, we have also sought to strengthen the safeguards to ensure that officials and staff members of the Court uphold the highest standards of integrity and professionalism in the exercise of their functions. I would like to emphasize in this regard that a system of disclosure of financial information for certain elected officials and senior managers is in place since 2015, that the Independent Oversight Mechanism created by the Assembly of State Parties is now fully operational, and that a new policy for the protection of whistle-blowers is being developed at the Court. We have also started a review of all relevant existing legal provisions, including codes of ethics. We consider it is important to assess the adequacy of this legal framework in order to identify any lacunae, introduce amendments if necessary and make recommendations to the Assembly of States Parties, if appropriate.

* * *

Mr President,

As I indicated, the Court is now confronted with a heavy workload that it is likely to continue next year.

At the start of the reporting period, convictions or sentences were issued in two trials against a total of six persons. The first one concerns Mr Al Mahdi for the destruction of world heritage property in Timbuktu, Mali. The second one was brought by the Prosecutor against Mr Jean Pierre Bemba and four co-accused for offences against the administration of justice related to the alleged corruption of witnesses in the main case against Mr Bemba. The conviction and sentences in this second case are now being considered on appeal.

Three trials are currently ongoing before the Chambers of the Court.

The latest one is the trial against Mr Dominic Ongwen, which started on 6 December 2016. More than ten years elapsed since the arrest warrants of the Court were issued against him, together with Mr Joseph Kony and others, for alleged crimes against humanity committed by members of the Lord's Resistance Army in Northern Uganda. Mr Ongwen finally surrendered of his own will and was transferred to the Court on 17 January 2015, thus allowing judicial proceedings to start. The trial it is now progressing at high speed. It is a huge development that a trial is now finally conducted before our judges. It illustrates, however, the enormous challenges that the Court needs to confront for its cases to reach the court-room. While the Court is doing its best to accelerate the pace of proceedings, many of the difficulties are beyond its control and can only be overcome with the cooperation of the international community. Without army and without police, the arrest of suspects remains the most notable single challenge of the Court, among many others.

Another illustration of a similar problem is the ongoing trial against Mr Bosco Ntaganda accused of war crimes and crimes against humanity allegedly committed in the Ituri district of the Democratic Republic of the Congo. Mr Ntaganda was under an arrest warrant from 2006 until 2013, when he finally also surrendered voluntarily and was transferred to the Court. Trial hearings are expected to finish early next year.

The third trial in progress is the case of Messrs Laurent Gbagbo and Charles Blé Goudé, both accused of crimes against humanity allegedly committed during post-election violence in Cote d'Ivoire between December 2010 and April 2011. The Prosecution is currently presenting its evidence and the trial is expected to continue throughout next year.

Mr President,

Trials are the most visible and also the most resource intense work at the Court. However, a lot is also happening in the Pre-Trial and Appeals divisions. Some of it may go unnoticed or be in fact under seal, as shown by the unsealing of the arrest warrant against Mr Al-Tuhamy Mohamed Khaled earlier this year. He is suspected of crimes against humanity and war crimes allegedly committed on Libyan territory from February to August 2011.

The work of the Pre-Trial and Trial divisions impacts on the workload of the Appeals Division which is now dealing with interlocutory appeals, appeals relating to reparations proceedings and, most notably, the appeals against the final conviction and sentences issued in two cases.

One of these is the case I have already referred to, against Mr Jean Pierre Bemba and four co-accused for offences against the administration of justice. The other one is the main case against Mr Bemba for failure to punish or prevent crimes of rape, murder and pillaging allegedly committed by his subordinates in the Central African Republic in 2002 and 2003. The Appeals Chamber is expected to issue its judgement in these two cases in the first quarter of next year.

* * *

Mr President,

As I have described, the Court is active with a number of cases at different stages of judicial proceedings. The Prosecutor also continues her investigative activities with respect to ten situations as well as her preliminary examinations relating to ten countries, on four continents.

None of these activities would be possible without the cooperation of States – parties and non-parties – as well as organisations. I would like to take this opportunity to acknowledge the excellent cooperation we receive from a large number of States, including most of the countries where it has opened investigations.

At the same time, it is of grave concern that several suspects remain at large despite arrest warrants issued by the Court. As I have already said, the arrest of suspects remains the main challenge for the Court. In total, requests for arrest and transfer issued by the Court are outstanding against 15 persons, in six different situations.

It is essential for our justice efforts that these individuals are brought before the Court. I appeal to all States to contribute to these efforts. I also urge the Security Council, which referred the situations in Darfur and in Libya to the Prosecutor to take measures to ensure full cooperation with the Court.

The latest arrest warrant, now outstanding, was issued on 15 August this year, against Mr Mahmoud Mustafa Busayf Al-Werfalli, in the situation in Libya. He is suspected of having committed, as well as ordered the commission of murder as a war crime in the context of incidents in Benghazi or surrounding areas, between June 2016 and July 2017.

* * *

Mr President,

Bringing the alleged perpetrators of the most serious crimes of international concern before justice is the core mandate of the International Criminal Court. The Court was indeed created on the belief that these crimes constitute a threat to peace and security and that investigating and prosecuting them will help prevent further atrocities and thus contribute to sustainable peace.

In so doing, the Court does not target states or regions but seeks to protect the victims of such crimes. It is thus essential to ensure that they understand the work of the Court and have sufficient ownership of justice efforts.

The Rome Statute recognizes this and contains, for the first time, elements intended to give victims a voice at all stages of the proceedings as participants in their own right, and not merely as witnesses of the crimes. The Rome Statute allows victims to provide information to the Prosecutor and to participate in the judicial proceedings to express their views and concerns.

Victims are indeed central to our work. As part of our measures to enhance performance, much has been done to improve the way we communicate and reach out to them so that they have sufficient knowledge of our work, and of their rights in our proceedings.

In the most recent Ongwen case, for instance, proceedings are broadcasted regularly at viewing sessions in the affected communities. In the Central African Republic, the Court's enhanced field office capacity has made it possible to extend outreach activities to many locations beyond Bangui. In Côte d'Ivoire, radio and TV programmes are distributed on a regular basis.

Almost thirteen thousand victims are currently participating in the various ICC's proceedings through legal representatives, including more than four thousand victims in the latest Ongwen trial. The ever growing number of victims willing to participate demonstrates both the success of the Court in improving the access of victims to justice as well as the huge task ahead.

Indeed, the participation of sometimes thousands of victims raises a number of legal and operational challenges as such participation must be genuine and meaningful without affecting the right of the accused to a fair and expeditious trial.

Moreover, as victims participate through legal representations, one particular challenge is to ensure a genuine channelling of victims' voices through legal counsel, Chambers have applied different systems to this effect but it is work in progress. More reflection will be needed in this regard.

* * *

Reparations for the harm suffered are another crucial aspect of the ICC's focus on victims.

As you are aware, the Rome Statute is the first instrument of its kind to provide for the possibility of ordering reparations to victims in case of conviction.

Following the completion of trials, reparations proceedings are now ongoing in four cases.

Last year, reparations were ordered in the case of Mr Germain Katanga, convicted for crimes committed during the attack on the village of Bogoro in the Democratic Republic of the Congo. The Trial Chamber awarded both individual and collective reparations to victims of crimes for which Mr Katanga was convicted and set the amount of his liability at one million dollars. The reparations order in this case has been appealed.

Most recently, collective and individual reparations, as well as some symbolic measures, were ordered in the case of Mr Al Mahdi, related to the destruction of buildings of a religious

and historical character in Timbuktu, Mali. The Legal Representative of Victims has filed an appeal against the reparations order.

As part of the ICC's reparations system, States Parties to the Rome Statute have established a Trust Fund for Victims, funded by voluntary donations from States and other donors. The Trust Fund may contribute financially to implementing reparations orders in case the convicted person is indigent, but also may provide broader assistance to address harm experienced by victims of crimes within the jurisdiction of the court, beyond the confines of specific cases.

In Northern Uganda, for instance, the Trust Fund has been active for ten years now, working with local NGOs on projects aimed at rehabilitating victims of crimes mentally and physically. I had the opportunity to personally visit some of these projects earlier this year and witness first hand, through discussions with the benefiting victims, the importance of the assistance that is being provided.

Reparations and assistance depend on voluntary contributions to the Trust Fund. I would like to stress the importance of these contributions for the success of the system and take the opportunity to thank all those States that have already donated to the Fund including the most recent donations given this year.

* * *

Mr President,

As I have already emphasized, the Court confronts many challenges and difficulties that can only be overcome with the full cooperation of States, organisations and civil society.

While the Court is not part of the United Nations, it shares its core goals and values and it is often engaged in situations that are also of concern for the organisation. As you are aware, the ICC and the United Nations are also formally linked through a relationship agreement. The continuing cooperation of the United Nations is crucial for the work of the International Criminal Court. I am thankful to the Secretary General, Mr Antonio Guterres and his predecessor, Mr Ban Ki-moon, for their support of the ICC. The Court is also highly appreciative for the excellent relations that it has with the Legal Counsel and other senior UN officials, and many programmes, funds and specialised agencies of the UN.

The cooperation of the United Nations with the Court takes many forms. It includes logistical and security assistance in the field, administrative and personnel arrangements, and judicial assistance, such as disclosure of documents and making UN staff available for interview and testimony.

All these different forms of cooperation, provided on a reimbursable basis, are highly valuable for the Court.

* * *

Mr President,

In the last thirty years, the concept of accountability has been put firmly in the global agenda. It is now widely accepted that there is an obligation to end impunity for the most serious crimes of concern to the international community: genocide, war crimes, and crimes against humanity. The emergence of this principle as a norm under international law has changed the parameters for the pursuit of peace.

There is now an expectation that there will be accountability for the most serious crimes and the conviction that this is necessary for sustainable peace. The question is no longer whether to pursue justice, but rather when and how.

The International Criminal Court is playing a central role in the international criminal justice system, and it is making important contributions to accountability for the gravest international crimes.

However, despite all the progress there are still huge gaps where impunity continues to flourish. These can only be addressed through the joint justice efforts of international, regional and national systems. No single jurisdiction alone can deal with this type of crimes, which involve multiple perpetrators as well as thousands or hundreds of thousands of victims.

It is essential to emphasize, in particular, that each State has the primary responsibility to prevent, investigate and prosecute genocide, crimes against humanity and war crimes. International and regional jurisdictions can only supplement but never replace the actions of States.

The International Criminal Court has been explicitly created as a complementary, last resort mechanism, intended to address only situations in which the relevant states fail to act. As a positive result of this complementary system, an increasing number of States have updated their national legislation to be able to investigate and prosecute international crimes at the domestic level. Others have also established specialized units within their justice system in order to deal with these types of crimes.

All these initiatives are commendable and necessary to establish an effective system of global justice. That is why it is also important to deploy all efforts to enhance national capacity to investigate and prosecute massive crimes. While capacity building as such is not the task of the ICC, we can assist in the reflection on the way forward and make our expertise available, where necessary. Just last week, the Court convened a regional seminar in Niger with particular emphasis on complementarity.

It is also important to deploy efforts to enhance membership in the ICC system. To this effect we cooperate closely with other actors promoting universality of the Rome Statute such as States Parties to the Statute, international and regional organisations, and civil society.

Promoting the universal participation in the Rome Statute is of fundamental importance in order to enhance the effectiveness and the legitimacy of the institution and its capacity to contribute to the rule of law, justice, and sustainable peace and development.

We have undertaken this year a number of initiatives that foster both the cooperation with the Court and the universality of the Rome Statute. I would like to mention in particular two important seminars that took place this year, one in Trinidad and Tobago the other one in the Republic of Korea.

The Court is grateful to the European Commission and all others that have financially supported these as well as other events organised by the Court to advance dialogue with States and other key partners. I would also like to specially thank the hospitality of all the states that accepted to host meetings of the Court.

Last month, I had the privilege to attend the Pacific Islands Forum Leaders' Meeting in Samoa, where we held an ICC workshop and engaged in fruitful discussions with many of the leaders present. There was wide recognition of the importance of the ICC and the rule of law for the protection of small and medium-sized countries, in particular. I am deeply

grateful to the government of Samoa and the Secretariat of the Forum for facilitating my participation in this meeting. It was a unique opportunity to reach out to heads of state and heads of government from the region and encourage greater participation of Pacific Island States in the ICC.

* * *

Mr President,

The quest for accountability is work in progress. There is much to celebrate but more concerted efforts are required to investigate and prosecute international crimes at all levels. To achieve effective deterrence, we must create a consistent pattern of accountability. Despite the historic achievements in the fight against impunity, we are not there yet.

We also need concerted efforts to improve the quality of international criminal justice. As I have explained, the ICC has achieved concrete results in improving its efficiency. But more work is needed here, too – and it should not be done in isolation.

The International Criminal Court was created on the belief that an international system cannot be associated with a particular legal system or a particular set of values. A truly international system incorporates elements of legal systems and traditions of the world and represents values that resonate across the globe.

This premise continues to be valid today. There is no particular legal system that is per se more apt for investigating and prosecuting this type of crimes. We must strive to identify the best tools of each system in order to improve the quality of our work. We did it together at the ICC among all judges, and we are now extending the dialogue to other courts and tribunals.

A step forward was taken two weeks ago in Paris, where a meeting of presidents and judges from several international criminal tribunals and mechanisms was held for the first time. As they experience similar challenges, there is need to engage in a dialogue on how best to solve them. I thank *l'Ecole Nationale de la Magistrature*, the French National School for the Judiciary, for hosting this extremely important and unprecedented event.

Indeed we must take stock of the achievements – and mistakes – of the past three decades in order to identify together the best tools for an effective system of international criminal justice for the 21st century.

Thank you.

[end]