

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Remarks to the 18th Diplomatic Briefing

[check against delivery]

*The Hague
26 April 2010*

Excellencies,
Ladies and Gentlemen,

In my remarks, I will update you on what has happened at the Court since the last briefing in November. Then, I would like to look ahead to the first Review Conference of the Rome Statute, which is now just more than one month away.

Since the last briefing, judicial activity at the Court has continued apace. The second trial, that of Mr. Mathieu Ngudjolo Chui and Mr. German Katanga, began on 24 November. Meanwhile the first trial, that of Mr. Thomas Lubanga, resumed in January and is now well into the defence phase. In addition to trial activity, important decisions have been rendered in the Pre-Trial and Appeals divisions. I will highlight three:

- On 3 February, the Appeals Chamber instructed Pre-Trial Chamber I to examine again, using the correct standard, whether to include genocide in the arrest warrant against Mr. Omar Al-Bashir, the President of Sudan.
- On 8 February, also related to the situation in Darfur, Sudan, Pre-Trial Chamber I found that the Prosecutor had presented insufficient evidence and therefore refused to confirm the charges against Mr. Bahar Idriss Abu Garda.
- And on 31 March Pre-Trial Chamber II approved the Prosecutor's request to open an investigation in Kenya.

In addition, Pre-Trial Chamber I is currently considering a request of the Prosecutor to render a finding of non-cooperation of Sudan in the case of Ali Kushayb and Ahmad Harun and to transmit this finding to the United Nations Security Council.

Looking ahead, the trial of Mr. Jean-Pierre Bemba is now scheduled to begin on 5 July. A handout available to you in English and French provides additional information on judicial activity since the last Diplomatic Briefing.

The Court's activity centres on its courtrooms, but the Court must also ensure that the proceedings are understood, maintain communication with States whose cooperation is essential to its operations, and engage with States considering adoption of the Rome Statute. The Court has engaged in a number of efforts in this regard, and I highlight in particular the Registrar's launching of weekly newsletters on the Court's activities and exploring of new means of communications such as youtube.

I would like to turn now to the Review Conference. The Review Conference is a seminal event for this institution and the Rome Statute. One element of the conference encompasses proposed substantive legal amendments to the Statute on such items as aggression. The Court takes no position on these issues and will not be involved in the discussions. However, the Review Conference also presents a tremendous opportunity for all of us to take stock of how far we have come in the development of international criminal justice, and to plan its future. In Kampala, if States are prepared to make ambitious pledges, they can give new impetus to realizing the ideals and goals of the Rome Statute.

As all of you are aware, the stock-taking exercise at the Review Conference will examine four different aspects of the Rome Statute system: cooperation, complementarity, the impact of the Rome Statute on victims and affected communities, and peace and justice. While the stock-taking is being prepared by States, I am very pleased that the Hague and New York Working Groups have been open to inputs from the Court, and I look forward to the Court's active participation in the stock-taking in Kampala.

Cooperation remains an area of vital importance to the ICC's functioning and judicial efficiency. As outlined in the Court's Report on Cooperation last year, cooperation is generally forthcoming. Nevertheless, priority needs include the arrest of suspects and agreements on relocation of witnesses, enforcement of sentences and interim release. It is now up to States to help identify from their perspective the challenges in providing cooperation and assistance, and to identify actions that can be taken. In Kampala, States could make concrete pledges to ramp up support for arrest efforts and to enter into assistance agreements with the Court. They could also set goals for the adoption of implementing legislation that would ease cooperation with the Court.

The principle of complementarity is at the heart of the Rome Statute. In this regard, it is important to differentiate the issue of admissibility from what is often called "positive complementarity." The former is the judicial aspect of complementarity and is to be adjudicated by the Court itself. The latter is, in contrast, an area led by States and other stakeholders, where the Court has at most a very minor role. Last December, I visited the eastern part of the Democratic Republic of the Congo and saw first-hand the incredible difficulties facing local military prosecutors seeking to try Rome Statute crimes. A lot can be done to better bring together those seeking to provide rule of law assistance and those in need. States, international organizations and NGOs must step to the fore. A first step in realizing complementarity is domestication of these crimes in national law. Yet fewer than half of all States Parties have adopted any implementing legislation. In Kampala, States will have many options for making pledges with regard to other aspects of positive complementarity, too. States could make pledges at the Review Conference when it comes to assisting national jurisdictions to build capacity in such areas as expertise on international criminal law, courtroom management, and penal system reform as well as to address other necessary issues such as judicial independence and the protection of witnesses. Many of these items fall within the scope of existing rule of law programming, but States could pledge to mainstream international criminal justice within these.

The third focus of the stock-taking will examine the impact of the Rome Statute on victims and affected communities. Victims, affected communities and communities under threat of future crimes should be the primary beneficiaries of the work of the Court and the entire Rome Statute system. I am pleased that through victim representation, outreach to victims, and the work of the Trust Fund for Victims, we have already come a long way. At the Review Conference, it is my hope that the voices of victims and affected communities will receive a thorough hearing when it comes to assessing what has been done so far, and where needs remain.

States could pledge to make new contributions to the Trust Fund. Or they could pledge to support new efforts to make the Court's work understood in affected communities.

And finally, it is my hope that the stock-taking panel on peace and justice can move forward the discussion on this important issue. It is my hope that at the Review Conference, States can commit to thoughtful engagement on how peace and justice best complement each other in practice.

These four areas of the stock-taking exercise provide room for a thorough review of the Rome Statute, but it is only the beginning of a process of review and reflection that will continue in the years to come.

While the stock-taking is centred on these four themes, we should also not forget the cross-cutting issues, in particular universality of the Rome Statute. Since November, I have travelled to countries whose governments were actively considering a sovereign decision to adopt the Rome Statute. The Court does not lobby States, but it can provide information to ensure that policy considerations are based on facts. I have focussed my energy on the Asia-Pacific, the region most under-represented in the Assembly of States Parties. In December I travelled to Nepal and Bangladesh and in January to Laos. On these visits, the Court benefited greatly from partnerships with States Parties and civil society, and excellent coordination with the United Nations and European Union. I was very pleased to see Bangladesh ratify the Rome Statute last month. This will make it the 111th State Party on 1 June, at the beginning of the Review Conference. It remains possible that other States may ratify the Statute during the Review Conference.

Thank you again for coming today. I now would like to give the floor to the Prosecutor, Mr Luis Moreno-Ocampo.