



Address to the Assembly of States Parties

30 November 2007

*Judge Philippe Kirsch
President of the International Criminal Court*

(English only version)

Mr. President,

It is my pleasure to address the sixth session of the Assembly of States Parties.

I would like to welcome the representatives of new States Parties (Japan, Chad) this year. With 105 States Parties, the Court is over half way to the eventual goal of universality. As we approach the tenth anniversary of the adoption of the Rome Statute, it is important that the number of accessions and ratifications continues to increase.

In my remarks, I would like to speak about:

- The activities of the Court since the fifth session of the Assembly,
- Cooperation between the Court and States, international organizations and civil society, and
- Specific issues on the agenda of this session of the Assembly.

I. Activities

A. *Proceedings*

I will start with an update on the Court's activities, beginning with judicial proceedings.

In the situation in the Democratic Republic of the Congo, cases of two detained individuals are currently taking place before Pre-Trial Chamber I and Trial Chamber I.

In January, Pre-Trial Chamber I confirmed charges against Mr. Thomas Lubanga Dyilo of war crimes, namely conscripting, enlisting and using children under fifteen to participate actively in hostilities. Trial Chamber I is presently addressing issues preliminary to the trial which is scheduled to start in March next year.

Pre-Trial proceedings are underway in the case of Mr. Germain Katanga who was surrendered to the Court on 18 October. The crimes alleged in the warrant of arrest for Mr. Katanga include three counts of crimes against humanity and six counts of war crimes, namely murder, inhumane acts, sexual slavery, willful killing, inhuman or cruel treatment, attacking civilians, pillaging, and using children under the age of fifteen years to participate actively in hostilities. The hearing to confirm the charges is scheduled to begin in February.

In the situation in Darfur, Sudan, Pre-Trial Chamber I issued warrants of arrest for two individuals in May. Mr. Ahmad Harun and Mr. Ali Kushayb are each wanted on over forty counts of crimes against humanity and war crimes, among them murder, persecution, forcible transfers of populations, attacks against civilians, pillaging and the destruction or seizure of enemy property. The Court has issued requests for arrest and surrender for these two suspects to States. Neither warrant has been executed yet.

In the situation in Uganda, which is before Pre-Trial Chamber II, one of the suspects subject to an arrest warrant was killed, rendering that warrant without effect. None of the other four warrants have been executed yet.

In these first cases, we are seeing the provisions of the Rome Statute being applied in practice. The Pre-Trial Chambers, an innovation in the Rome Statute, have completed the first cycle of activities in one case. In another example of an innovation in the Rome Statute, victims are participating in proceedings in their own right. The Court is committed to ensuring fair and expeditious proceedings. As the judges decide fundamental issues of law and practice in these and other areas, we expect that the efficiency of proceedings will continue to increase over time consistent with the Rome Statute and the Rules of Procedure and Evidence.

B. Field Activities

I would like to turn next to the Court's activities in the field.

Although the seat of the Court is in The Hague, the Court has a substantial presence in the field. The Court now maintains five offices in or near the countries where situations are under investigation by the Prosecutor. The newest office was established in October in the Central African Republic, following the decision by the Prosecutor to open an investigation into the situation in that country.

One of the primary functions of these field offices is to undertake outreach among local populations. Field offices themselves serve as public faces of the Court locally. Following the decision of the Assembly last year, the Court has been implementing the strategic plan for outreach in the different situations. Outreach teams are based in the field both in Uganda and the Democratic Republic of the Congo. In the situation in Darfur, the Court has conducted outreach workshops, including mass outreach in refugee camps in Chad. I understand that States Parties may convene a meeting on outreach during this session. Representatives of the Court will be available to provide more detailed information on the Court's outreach activities.

C. Administration

I would like to now provide an update on the administrative activities of the Court.

In 2007, the Court continued with implementation of the strategic plan. Among its priorities, the Court focused on implementing the strategic plan for outreach and developing strategies in relation to victims' issues, human resources and inter-organ decision-making. The Court is now reviewing priorities, plans and processes to improve implementation of the strategic plan in 2008.

In the implementation of the strategic plan and in other areas of administration, the Court benefited from dialogue with the Working Groups of the Bureau in The Hague and New York and would like to express its appreciation to the coordinators and facilitators of these groups. The Court will continue to work to further enhance the strategic, policy-level dialogue with these bodies in 2008.

II. Cooperation

Mr. President,

I would like to turn now to the question of cooperation.

The success of the Court is the common aim and collective responsibility of the Court, States Parties, international organizations and civil society.

States have the right to expect that the Court does its utmost to ensure the Rome Statute system works as efficiently and as effectively as possible. The Court fully shares these objectives. Since its inception, the Court has striven to meet the high expectations of States and other stakeholders. At the same time, the relationship between the Court and States Parties is not just about dialogue on administrative issues and managerial oversight of the Court by the States Parties. The Rome Statute entrusts States with substantial responsibilities to ensure the success of the ICC system. These obligations are set out in the Rome Statute and were recently elaborated in the report of the Bureau on cooperation. They include ensuring sufficient implementing legislation, respecting the judicial process and cooperating fully with requests of the Court. Some States have received such requests deriving from case-related decisions by the Court. Others may be especially well-placed to provide operational support in a given situation. However, it is the collective responsibility of all States to support and cooperate with the work of the Court.

In the past year, States Parties contributed to the achievements of the Court by responding positively to requests for cooperation or assistance, for example by providing logistics, information or other support to field operations. States Parties also provided diplomatic and public support for the Court in their bilateral relations and in multilateral fora. Several States have entered into agreements to provide additional support, in particular with respect to the enforcement of sentences or for the protection of victims and witnesses, the latter being a key concern of all organs of the Court.

International and regional organizations also provided critical support to the Court. Among these, the support and cooperation of the United Nations has been particularly valuable to the Court, especially in the field. The Secretary-General's presence at this session of the Assembly reaffirms the importance of this special relationship to both institutions. Since the conclusion of the Relationship Agreement, the Court and the United Nations have constantly deepened our mutual relations. The New York Liaison Office of the Court is helping to further strengthen communication and relations between the Court and the United Nations. On a regional level, the Court has had regular exchanges with the European Union and looks forward to concluding a memorandum of understanding and developing its cooperation with the African Union.

The Court greatly appreciates the important contributions of civil society to a strong, impartial and effective Court. Civil society organizations have been essential in promoting ratification in many States. They have assisted in ensuring the Court receives necessary cooperation by urging States to adopt implementing legislation and providing assistance or guidance on how to do so. They have raised awareness and understanding of the Court, its role and the importance of justice at critical junctures where others have been silent. The

continued support of civil society in these areas, as well as their independent observations on the activities of the Court, will remain important for the future.

Mr. President,

Based on the Court's experience over the past year, I would like to outline three areas in which cooperation and support will need to continue, and indeed to be enhanced, to sustain the credibility and effectiveness of the Court.

First, operational cooperation will continue to be critical to the functioning of the Court. A number of direct requests for cooperation have not yet been fulfilled. Of these requests, the outstanding warrants of arrest are the most significant. The lack of arrests goes directly to the credibility of the system that States established in the Rome Statute. Without arrests, there can be no trials. Without trials, victims will again be denied justice. The potential deterrent effect of the Court will be reduced. The outstanding warrants are a concern of all States Parties. Ensuring their execution is a collective challenge.

In addition to arrests and again in the area of operational cooperation, assistance in the relocation and protection of victims and witnesses is of pressing importance. The number of persons seeking protection or being accepted into the Court's protection programme has increased dramatically. I invite States that have not yet done so to consider concluding agreements with the Court or to consider how they may assist willing States to develop their domestic capacities to provide support to the Court.

Second, States must ensure full respect for the Court and its judicial processes. This has not always been the case in practice. It is clear of course that the situations and cases before the Court are linked to broader complex political issues and developments. This does not absolve States of their responsibilities to comply with their legal obligations and to remain engaged with the judicial process. Compliance with the decisions of the Court is not just another issue on the negotiating table. It is a legal obligation under the Rome Statute and relevant resolutions of the Security Council. Similarly, it must be clearly understood that the Court is bound to adhere strictly to and its judicial mandate cannot go beyond or deviate from that mandate.

Third, public and diplomatic support for the Court and for international justice more broadly is vital to a strong and effective Court. Earlier this year, relative silence was observed in situations where public support for the Court and for the need for justice more broadly would have been expected. Silence in these situations may send, and indeed has sent the wrong messages to perpetrators and potential perpetrators of serious international crimes. Strong public support is essential to demonstrate that the Court has the backing to be effective. It is also important that States Parties provide diplomatic and public support more generally, both in their bilateral relations and in multilateral fora, including during the general debate of the Assembly. Such support fosters an environment in which States are more likely to comply with their legal obligations and to cooperate with the Court. Furthermore, public and diplomatic support can contribute directly to the prevention of crimes by reinforcing expectations, including among potential perpetrators, that the Court's

decisions will be enforced and that the international community's commitment to justice will be upheld.

There is also a domestic element to increasing support for the Court. The affairs of the Court are not the sole province of ministries of foreign affairs and their legal departments. As the Court's operations have expanded, it has come increasingly into contact with other departments, other ministries and other branches of government. To be effective, the Court needs governments to ensure the sustained support of all those throughout their national systems who interact with or who work on issues and situations related to the Court.

Past experience has confirmed the deep commitment of States Parties to the Rome Statute and to its underlying principles. As the Court's operations have developed, there have been new challenges for both the Court and for States Parties in practice. The Court has had opportunities recently to draw the attention of States Parties to the areas where cooperation is needed. Their reactions have been encouraging for the future and have indeed already resulted in tangible, positive developments in the last few months. I am confident that the Court will be able to count on the strong support and cooperation of States Parties, international organizations and civil society now and in the future.

III. ASP Issues

Mr. President, I would now like to comment on two issues on the agenda of this session of the Assembly.

I would start with some general remarks on the budget. The Registrar will present the Court's position in more detail next week. The Court has worked with the Committee on Budget and Finance to continue to improve both the structure and content of the budget. The Court is pleased with its relationship with the Committee. The Court accepts that it has to address the underspending of the budget and agrees with the Committee's recommendations on this issue. However, proposed cuts are of concern in two areas. First, the Court is concerned about proposed cuts to the legal aid budget. Provision of adequate legal assistance is essential to the fairness of trials and to maintaining the reputation of the Court. Second, the Court is concerned about the recommended cuts to the budget for interim premises. The Court has achieved maximum occupancy in its current premises. As recruitment processes speed up, there is urgent need to find additional space. The Court and the host state are currently trying to find an intermediate solution.

The other issue before the Assembly on which I wish to comment is the permanent premises. Establishing permanent premises in a sound and timely manner is of particular importance to the Court. For several years, the Court and the Assembly have worked towards the establishment of permanent premises. Over the past year, the Court participated in an extensive and fruitful dialogue together with the Working Group of the Bureau and the Host State. As a result of this dialogue, the Court believes that the Assembly now has the information necessary to move to the next step in the process. The Court considers that the proposal reflected in the draft resolution prepared by the facilitator provides a sound basis to proceed.

IV. Conclusion

Mr. President,

On 17 July next year, the world will celebrate the tenth anniversary of the adoption of the Rome Statute and will ask what has been achieved. We – the Court, States Parties, international and regional organizations and civil society – have already made significant progress. The Court is fully operational. Investigations and proceedings are ongoing in four situations. Victims are participating in proceedings and the Trust Fund for Victims is functioning. Most importantly, it is increasingly recognized that the Court is having the impact for which it was created by the States Parties by contributing to the deterrence of crimes and improving chances for sustainable peace.

Notwithstanding this progress, we have only begun to achieve the objectives expressed in the preamble to the Rome Statute. The need of victims - and of the international community as whole - for the Court remains as fundamental today as it was in Rome on the 17th of July 1998. Working together, we can ensure that the Court makes lasting and sustainable contributions to justice, peace and accountability around the world. The Court knows it can count on your cooperation.

Thank you.