



Judge Philippe Kirsch
President of the International Criminal Court

Address to the United Nations General Assembly
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(English version)
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Mr. President,
Excellencies,
Distinguished delegates,
Ladies and gentlemen,

I am very pleased today to present the third annual report of the International Criminal Court to the United Nations.

Since its establishment, the Court has developed substantially in its activities and in its relationship with the United Nations. Nevertheless, we are still at an early stage in the life of the Court. Much more remains to be done to guarantee the success of this nascent institution.

In my remarks, I would like to provide you with a brief overview of recent developments at the Court, elaborate on the Court's contributions to the aims of the United Nations and speak about the importance of continued support and cooperation from the United Nations.

I. The Court Today

Mr. President,

Today, the Court stands on the verge of its first trial. In January of this year, a chamber of three judges confirmed charges of war crimes against Mr. Thomas Lubanga Dyilo, an alleged militia leader from the Democratic Republic of the Congo. He is accused of enlisting, conscripting and using children under the age of fifteen to participate actively in hostilities. A Trial Chamber comprised of another three judges is currently addressing preliminary issues before the trial begins early next year.

In another case in the situation in the Democratic Republic of the Congo, Mr. Germain Katanga 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. An initial hearing was held last week following his surrender. Pre-trial proceedings will take place over the coming months.

In the situation in Darfur, Sudan – a situation referred to the Court by the United Nations Security Council – a chamber of three judges 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.

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In the situation in Uganda, the Court issued five warrants of arrest in 2005 for members of the group known as the Lord's Resistance Army, including its leader, Joseph Kony. Two of the suspects are wanted on over thirty counts of crimes against humanity and war crimes, including murder, attacking civilians, pillaging, cruel treatment and enslavement. Two others are wanted on ten and seven counts respectively of crimes against humanity and war crimes, also including murder, enslavement, attacking civilians and pillaging. One of the suspects was killed, rendering that warrant without effect. None of the other four warrants have been executed yet.

In May, the Prosecutor opened a fourth investigation. This investigation is into the situation in the Central African Republic. Two weeks ago, the Court opened a field office in the capital, Bangui. This is the fifth field office opened by the Court.

The Office of the Prosecutor is also analyzing and assessing information on alleged crimes within the jurisdiction of the Court in other situations on three different continents.

The Court is fully operational. The Prosecutor is conducting investigations and collecting evidence. Judicial proceedings have taken place at the pre-trial and appeals levels and are beginning at the trial level. The special regard accorded to victims under the Rome Statute has developed in practice. The Trust Fund for Victims is fully functioning. For the first time in the history of an international criminal court or tribunal, victims are participating in proceedings in their own right.

II. The ICC's Contribution to the Aims of the United Nations

Mr. President,

Ensuring justice for international crimes is important in itself. It is also a means to achieve other objectives found both in the Charter of the United Nations and in the Statute of the International Criminal Court. Throughout the course of history, genocide, crimes against humanity and other serious international crimes have not arisen spontaneously. Rather, these crimes have occurred - and continue to occur - in the context of complex political conflicts. More often than not, there were attempts to resolve such conflicts through expedient political compromises. More often than not, these compromises ignored the need for justice and accountability. And more often than not, expedient political solutions which ignored the need for justice unraveled, leading to more crimes, new conflicts and recurring threats to peace and security.

The International Criminal Court was created to break this vicious cycle of crimes, impunity and conflict. It was set up to contribute to justice and the prevention of crimes, and thereby to peace and security.

The Court is contributing to the realization of these objectives. Earlier this year, the Secretary-General noted, "Already, the activities of the Court and its Prosecutor have a deterring effect on potential perpetrators of international crimes." An expert report on the situation in Uganda observed that, "the ICC investigation of the Lord's Resistance Army has

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been crucial for promoting peace, improving security in northern Uganda and embedding international accountability standards into negotiations.” (International Crisis Group)

III. Support and Cooperation

A. Principle of two pillars

Mr. President,

The impact of the Court has resulted from its credibility as an independent and impartial institution whose decisions will be enforced. Sustaining this credibility depends on the two pillars of the Rome Statute system.

The Court itself is the judicial pillar. It is the responsibility of the Court to continue to maintain its credibility as an independent and impartial judicial institution through its strict adherence to the Rome Statute.

The other pillar of the Rome Statute – the enforcement pillar – has been reserved to States and, by extension, international organizations. The Court requires support and cooperation in many areas, in particular the arrest and surrender of suspects and the protection of victims and witnesses. The primary responsibility for providing cooperation and support rests with the States Parties to the Rome Statute. However, States not party to the Statute and international organizations, in particular the United Nations, are also in positions to provide valuable assistance to the Court.

B. Cooperation and support provided to date

States have contributed individually 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 or to the surrender of individuals to the Court. States have 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 the protection of victims and witnesses.

The United Nations has provided critical cooperation and support to the Court. I would note, in particular, that the Court has received strong support from various United Nations bodies in the field. The Court appreciates the steps taken by the Secretary-General to raise the outstanding warrants of arrest in the situation in Darfur, Sudan. The General Assembly and the Security Council have provided important public support to the Court in recent years by emphasizing respectively that “justice ... is a fundamental building block of sustainable peace.” (A/RES/61/15) and that “ending the climate of impunity is essential in a conflict and post-conflict society’s efforts to come to terms with past abuses, and in preventing future abuses.” (S/PRST/2004/34).

C. Outstanding issues

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Mr. President,

Notwithstanding the support and cooperation received to date, certain issues need to be addressed in order to sustain the credibility and effectiveness of the Court.

First, a number of direct requests for cooperation have not yet been fulfilled. Of these requests, the outstanding warrants of arrest are the most significant. Without arrests, there can be no trials. Without trials, victims will again be denied justice and potential perpetrators will be encouraged to commit new crimes with impunity.

Second, the implementation of the judicial decisions issued by the Court has been uneven. It is clear of course that the situations and cases before the Court are linked to broader, complex political issues and developments, as has always been the case in similar situations in the past. Nevertheless, 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. Conversely, it is to be clearly understood that the Court is bound to adhere strictly to its judicial mandate and to limit itself to that.

Third, relative silence has been observed in situations where public support for the Court and for the need for justice more broadly would be expected. Silence in these situations may send the wrong message to perpetrators and potential perpetrators of serious international crimes and if the very purposes for which the Court was created are to be preserved. It is important that the international community reaffirm its fundamental commitment to the principles of justice and international law enshrined in the Charter of the United Nations and in the Statute of the ICC.

D. Recommendations

The Court has already had opportunities to draw the attention of States Parties to the above issues. Their reactions have been encouraging for the future and have indeed already resulted in tangible, positive developments. As for the United Nations itself – including its Member States, the General Assembly, the Security Council and the Secretariat – it is in a position to take a number of actions to sustain and build upon the early impact of the Court. This support and cooperation can be grouped into three general areas.

First, operational cooperation from the United Nations and its Member States will continue to be critical, especially in the field. In addition to arrests, another area of pressing importance is assisting in the relocation and protection of victims and witnesses. The number of persons seeking protection or being accepted into the Court's protection programme has increased dramatically. The Court invites States which have not yet done so to conclude agreements on the relocation or protection of victims and witnesses.

Second, United Nations or other missions that can assist the Court should be empowered to fully support and cooperate with the Court. The objectives of the United Nations and those of the Court are complementary. This is reflected in the Charter of the United Nations, the Rome Statute and the Relationship Agreement between the Court and the United Nations as well as in the first referral by the Security Council of a situation to the Court.

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Third, the public and diplomatic support of the United Nations for the Court and for international justice more broadly is vital to ensuring a strong and effective Court. Such support fosters an environment in which States are more likely to comply with their legal obligations and to cooperate with the Court. Public and diplomatic support can also contribute directly to the prevention of crimes by reinforcing expectations, including among potential perpetrators, that the Court's decisions will be carried out and that the international community's commitment to justice will be upheld.

IV. Conclusion

Mr. President,

The Court did not create itself. It was set up by States to achieve the objectives which they expressed in the preamble of the Rome Statute: to put an end to impunity for genocide, crimes against humanity and war crimes, to contribute to the prevention of these crimes which threaten peace and security and to guarantee lasting respect for and the enforcement of international justice. These aims are universal. They are reflected in the Charter of the United Nations and in the statements and practice of the Members States and of the organization of the United Nations.

Ten years ago, the United Nations General Assembly decided to convene the Rome Conference which adopted the Rome Statute. On 17 July next year, the world will celebrate the tenth anniversary of the Rome Statute and will ask what has been achieved.

It is our collective responsibility to ensure that the momentum created in 1998 continues and that international justice prevails. I assure you that the Court will continue to do its part to ensure its credibility and effectiveness through acting independently and impartially in strict accordance with the Rome Statute. The Court is confident that it can count on the strong support and cooperation of States, the United Nations, other international and regional organizations and civil society, now and in the future.

Thank you.