



**Cour
Pénale
Internationale**
**International
Criminal
Court**

Le Président
The President

SPEECH TO THE UNITED NATIONS GENERAL ASSEMBLY

by

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English

CHECK AGAINST DELIVERY

Mr President,
Excellencies,
Ladies and Gentlemen:

I am honoured to present, for the second time during my tenure as President of the International Criminal Court, the Court's annual report to the United Nations.

The Court's written report has been distributed as part of the records of this Assembly.¹ I shall not repeat its contents in detail, beyond giving an overview of the state of affairs at the Court; while engaging, in the main, a number of topical issues.

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Before proceeding further, I must pause here to congratulate H E Professor Tijjani Muhammad-Bande for his election as the President of the General Assembly. I am fortunate to know him personally as a man whose immense intellectual prowess is eclipsed only by his unforced aptitude of humility and uncommon sense of duty. With him, the UN General Assembly is in excellent hands.

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I would like to start by expressing the Court's appreciation to the United Nations for the continued, invaluable support and assistance that the organisation provides to the ICC, even if on a reimbursable basis as necessary. As detailed in the Court's written report, this assistance is broad-ranging, and it includes cooperation on issues such as conference services, transportation, communication, medical assistance, and security arrangements. Such assistance, particularly in the context of field operations, is truly critical to the Court's work.

On behalf of the Court, I sincerely thank the Secretary-General and the senior management of the UN for those and other manner of support of the Court - as we strive toward our shared goals of peace, security, universal enjoyment of human rights, development, and respect for international law.

I also thank successive Presidents of the General Assembly for the political and moral support that they have given the Court to the extent of their abilities. I was witness to such support coming from the past President of the GA, Ms María Fernanda Espinosa during her tenure. And I am already seeing it immediately from Professor Muhammad-Bande's tenure.

¹ A/74/324

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The cooperation of States remains equally important to the Court's operations. We are extremely grateful for the strong cooperation the Court continues to receive from numerous States, whether in terms of provision of information, facilitating travel of witnesses, access to documentation or freezing of assets.

There is, however, one area – the execution of arrest warrants – where the lack of successful cooperation presents a major obstacle to the Court's ability to carry out its mandate.

An important aspect of this worrisome state of affairs concerns the United Nations. More than half of the outstanding arrest warrants – eight, to be precise – relate to situations referred to the ICC Prosecutor by the Security Council. The obligation of the governments of Sudan and Libya to cooperate fully with the ICC stems from resolutions of the Security Council adopted under Chapter 7 of the Charter. I urge the Council to take concrete measures to ensure compliance with the Court's requests for cooperation addressed to the governments of Sudan and Libya, in particular for the arrest and transfer of the suspects currently at large.

It remains unacceptable that allegations of criminal conduct of the gravity implicated in these cases are not properly heard before a court of law. It is unacceptable from the point of view of the victims, it is unacceptable from the point of view of the international community, and it is unacceptable from the point of view of the rule of law. I would like here to underscore the Courts overarching modus operandi; and it is this: each suspect before the ICC is afforded a fair hearing in accordance with the strongest guarantees of due process required by international standards.

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Let me now give a very brief summary of the Court's activities during the past year.

Judgments at first instance on whether the defendant was guilty or not guilty – were rendered in two trials, conducted against three defendants.

One of those is the trial of Mr Bosco Ntaganda. He was found guilty on 18 counts of war crimes and crimes against humanity committed in the Ituri district of the Democratic Republic of the Congo. The defence has filed an appeal, which is still pending.

The second of the two trials involved the cases against Mr Laurent Gbagbo and Mr Charles Blé Goudé, concerning allegations of election violence in Cote d'Ivoire. The Trial Chamber acquitted the two accused at the end of the presentation of the prosecution evidence, following what lawyers in some parts of the world popularly call 'no case to answer' submissions. The Prosecutor has appealed the judgment, and the appeal is pending.

A third trial, involving the case of Mr Dominic Ongwen, continues with the presentation of the defence case. The case concerns allegations of crimes committed in Northern Uganda.

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As regards new cases proceeding to trial, charges of war crimes and crimes against humanity were recently confirmed against Mr Al Hassan Ag Abdoul-Aziz Ag Mohamed Ag Mahmoud in relation to alleged acts committed in Timbuktu, Mali. Barring the outcome of a pending appeal by the Defence, the trial is expected to start next year.

The Court issued its first arrest warrants in the 2nd situation in the Central African Republic, which concerns armed violence that began in that country in 2012. In that connection, Mr Alfred Yekatom and Mr Patrice-Edouard Ngaïssona were respectively transferred to the Court's custody last November and last January. The Pre-Trial Chamber is currently deliberating to render its decision on the confirmation of charges, for which hearings were held from September until October this year.

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Beyond the work of the Pre-Trial Division and the Trial Division, the Appeals Chamber has been extremely busy during the reporting period. Amongst the more notable developments, the Appeals Chamber issued a judgment on a question of cooperation concerning the failure of the Hashemite Kingdom of Jordan to execute the arrest warrant that the Court issued against Mr Omar Al Bashir (who was President of Sudan at the time the cooperation request was made).

At the heart of the matter was whether President Al Bashir (as he was at the material time) was protected from arrest by immunity allowed him by international law. Following a weeklong hearing during which the Appeals Chamber heard submissions from the African Union and the League of Arab States as well as several professors of law (with expertise on the subject matter), the Appeals Chamber issued its judgment in the case.

In the judgment, the Appeals Chamber determined that in the particular circumstances of that case, international law did not recognise any immunity for Mr Al Bashir in relation to the Court.

It is a necessarily lengthy judgment that has clarified – and settled – the legal question in dispute – for purposes of ICC jurisprudence.

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In other developments during the reporting period, the Prosecutor requested judicial authorisation to commence an investigation into alleged crimes against humanity committed against the Rohingya people from Myanmar (which is not a State not party to the Rome Statute), including the deportation of victims to Bangladesh (which is a State Party). This followed a preliminary ruling by Pre-Trial Chamber I saying that the Court may exercise jurisdiction if at least one element of a crime within the jurisdiction of the Court - or part of such a crime – is committed (or consummated as it were) on the territory of a State Party to the Statute.

In relation to Afghanistan, the Pre-Trial Chamber rejected the Prosecutor's request for authorisation to open investigation into the situation. This decision was since appealed by the Prosecutor and some representatives of victims. The appeal is currently pending before the Appeals Chamber.

The Prosecutor's interest in that situation is anchored upon the theory that the alleged events occurred in the territory of Afghanistan which is a State Party to the Rome Statute – or that the alleged violations had occurred in the territories of other States that are States Parties to the Rome Statute.

As you are no doubt aware, the Afghanistan matter has attracted much controversy. This has come from representatives of victims groups who had been disappointed by the decision of the Pre-Trial Chamber.

But my report will be necessarily incomplete if the records of this assembly omit the mentioning of the controversy provoked by direct political threats issued against the Court, respectively by the former National Security Adviser as well as by the Secretary of State of the United States government. Those are unfortunate developments that are wholly out of place in any society that prides the rule of law.

But the Court must do its work undeterred by these threats and controversies, whether from civil society members acutely disappointed about judicial decisions they do not like, or from anxious state officials intent on preventing judicial decisions they do not

want. The international community and every one of its members must ensure that threats of any kind are not made to the independence that the Court needs to serve its mandate to humanity.

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The Prosecutor completed her preliminary examination in Gabon, concluding that the information available did not provide a reasonable basis to believe that crimes within the Court's jurisdiction had been committed, and therefore declining to open an investigation.

The Office of the Prosecutor has ongoing preliminary examinations into eight potential situations; and ongoing investigations in 11 situations.

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Excellencies,
Ladies and gentlemen:

I should say a few words about the reparative justice work that is being done under the Rome Statute system.

More than 10,000 victims have been admitted to participate in the ICC's proceedings, and to request reparation for the harm they have suffered. This new focus on reparative justice represents a major shift in paradigms: compared to the processes of the *ad hoc* tribunals for Rwanda and former Yugoslavia, which were focused almost exclusively on punitive justice.

The ICC's Trust Fund for Victims is implementing the Court's first judicial orders on reparation.

In the case of Mr Ahmad Al Faqi Al Mahdi, who pleaded guilty to the war crime of destruction of religious monuments in Timbuktu, Mali, the judges ordered a range of reparation measures tailored to the circumstances of the case. These included individual compensation to those whose livelihoods depended upon the protected heritage sites; symbolic measures to signal public recognition of the moral harm suffered; community measures aimed at restoring lost economic activity; and dissemination of Mr Al Mahdi's apology in the main languages spoken in Timbuktu.

In another case, that of Mr Germain Katanga, the judges ordered individual monetary compensation as a symbolic measure; but also collective reparation in the form of

psychological support, as well as support for housing, support for income-generating activities, and support for education.

The overarching idea is that the reparation measures are aimed at addressing in a specific way the harm that the victims have suffered, as a result of the crimes for which the Court finds the defendant guilty. If the defendant has financial means, these will be attached and used for the reparation. But if he or she is indigent, the Trust Fund for Victims can use voluntary donations received from governments and from private donors.

Furthermore, beyond the four-corners of the cases in the courtroom, hundreds of thousands of victims in Uganda and the Democratic Republic of the Congo have benefited from the programmes of the Trust Fund for Victims under its assistance mandate.

The 'assistance' mandate describes the aspect of the Trust Fund's work that seeks to bring some succour to obvious victims of crimes, unrestrained by considerations of proof of guilt (or not) of the perpetrator for the harm that the victims suffered.

The Trust Fund is currently expanding the scope of its assistance mandate to the Central African Republic, and studying the feasibility of commencing projects in several other countries.

I am bound to note that the Trust Fund's ability to make a difference depends very much on its financial means. I strongly urge all member states of the United Nations to make voluntary contributions to the Trust Fund for Victims in order to support its important work.

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Mr President,
Ladies and Gentlemen:

Allow me now to reiterate here the essential values and dividends of the ICC to our world.

And, here, I must note that just weeks before the adoption of the Rome Statute in 1998, President Nelson Mandela reminded the world that there had been enough horrors that human beings had visited upon one another. He observed that many of those horrors might have been avoided – or at least minimised – if there had been an effective, functioning International Criminal Court.

We now have in place that ICC that Madiba had wished for - a permanent mechanism to ensure eventual accountability for those who subject others in future to the horrors of genocide, crimes against humanity, war crimes, and yes, the crime of aggression, over which the ICC now has jurisdiction.

During 17 years of operation, the ICC has done much more than many imagined it could do. Yes, indeed: the ICC has fundamentally changed the way the world looks at accountability for those atrocious crimes.

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On the occasion of the adoption of the Rome Statute, UN Secretary-General Kofi Annan said this: *'Until now, when powerful men committed crimes against humanity, they knew that as long as they remained powerful no earthly court could judge them'*².

That observation captured the essential purpose of the ICC, and its enduring value to humanity.

With a permanent international criminal court now in place, even the most powerful men, and usually men, can no longer be certain that they will escape unpunished, if they commit (against their fellow humans) the heinous crimes that the Rome Statute forbids.

Even if prevailing circumstances seem to make impunity possible for the meantime, perpetrators and their accomplices will – now – have to recognise that their impunity will always be actionably illicit in the eyes of the world and it may not endure: as long as we have a permanent international criminal court that will ask questions of accountability in the long run – on the international stage - when those questions were not asked at home.

Yes, there may be resistance – even strident threats – against asking those questions. But, as long as we have the ICC up and running, those questions will be asked – eventually.

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And with that comes the ICC's correlative value of deterrence. This is a value that cannot be emphasised strongly enough.

There are, indeed, many reasons to insist that the mere existence of this permanent judicial mechanism for accountability does truly serve – at the very least – as an

² <https://www.un.org/press/en/1998/19980720.sgsm6643.html>

inconvenient obstacle to freewill on the part of those inclined to commit inhumane crimes on a scale that is massive or widespread.

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The value of the ICC in this respect is particularly evident in the context of elections in Africa - my own native region - where violence had historically been much too frequently used as a means to gain political power, in the form of widespread or systematic attacks against a civilian population. That is to say: a crime against humanity. Since the advent of the ICC and its first cases concerning election violence, there has been a noticeable reduction in the incidence of electoral violence that tended always to blight the democratic experience where such violence is used to gain power in the name of democracy.

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As some of you may know, I was the presiding judge in a certain case that involved post-election violence in 2007-2008. We heard evidence from an expert witness in that case. He testified that prior to the election in question, past elections in that situation country had perennially been marred by incidences of violence that tended to wax more and more virulent with successive elections. But, following the commencement of the ICC proceedings that addressed the 2007/2008 violence, subsequent elections in the country have seen a marked decrease in the occurrence of violence during elections.

I have also been told by leaders of States, government ministers and civil society leaders that the ICC's existence and work have been very significant – and positive - in preventing bloodshed in the context of elections in their countries. This is because everyone had seen that whoever would commit such violence might end up before the ICC to answer for their actions.

Such deterrent value alone is enough of a return on the ICC investment.

That is to say that those of you who fund the ICC's operations, your money has not gone to waste.

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But the Court's critical values go beyond those.

The ICC also has palpable value – I must insist – in the dimension of sustainable economic and human development which the UN’s 2030 Agenda insists upon – quite rightly - in the manner of SDG#16.

Excellencies, ladies and gentlemen, the proposition is simple enough. And it is this: **there can be no sustainable development, where conflicts, atrocities and fear reign supreme.**

Some of you may have heard me say this before. Yet, the significance of the point recommends its reiteration. And it is to say this: socio-economic development will remain a pipe-dream:

- Where people are being killed, or injured and traumatised for life by all the violence of armed conflicts
- Where millions of people are unable to work, because of the economic slowdown that war causes
- Where farmers cannot go to their farms because of active military operations, or landmines
- Where entrepreneurs cannot do business, because of raging wars that always result in the destruction of economic infrastructures
- Where children cannot go to school, because of war
- Where precious resources – already scarce in many cases - are wasted on weapons, rather than education, healthcare and economic sustainability
- Where investors are frightened away by conflict and instability
- Where the best brains of their nations are compelled to flee in droves in search of safer countries
- And, where neighbouring countries – and even those much further away – are required to struggle to cope with refugee flows that result from countries at war.

Just earlier this year, the Libya’s Minister of the Economy described how the ongoing conflict in his country had severely damaged the country’s infrastructure and eroded well over 40 billion US dollars from Libya’s foreign exchange reserves alone.

That testimony bears out what the IMF and the World Bank have been saying for a long time about the relationship between armed conflicts and economic development.

According to an important study published in 2011 by the World Bank, *‘the average cost of civil war is equivalent to more than 30 years of GDP growth for a medium-size developing economy [;] [and] [t]rade levels after major episodes of violence take 20 years to recover’*³.

³ World Development Report 2011, Overview, http://wdr2011.worldbank.org/sites/default/files/WDR2011_Overview.pdf, pp. 5-6.

Moreover, these negative implications do not stop at national borders. The effects of conflict impede growth not only in the countries directly embroiled in war; they also impede regional development, in addition to the migration problems that they generate, to which I alluded earlier.

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And we may also pause to consider that the price tag of war may be more dispiriting, in other ways. Now, consider this. According to estimates, the total cost of the First and Second World Wars was around 20 trillion – i.e. 20 thousand billion – US dollars in today's currency. This is about 25% - or one-fourth - of the total GDP of all the world's nations put together. These are almost inconceivable amounts of money at any point in history – that is wasted on just two wars.

Is it truly difficult to see that our common humanity would have been better served, if all that money had been invested in the search for solutions to some of the world's more intractable problems, through science, education and development? Imagine, for instance, what would happen if the same US\$20 trillion were invested in additional funding into research for breast cancer and the other cancers and some of the other maladies that break humanity's heart every day.

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All of this is to say that preventing conflicts and the atrocities they breed, and addressing them purposefully and unapologetically through the rule of law, comprise an objective with far-reaching significance for the most critical aspects of human life: including economic development.

This is an objective for the whole world. No one state can solve it alone – let alone remain insulated from it for long. And here, I must stress that no physical barrier is strong enough – deep enough, high enough, hazardous enough - to keep any country permanently insulated from the human tide of misery that is consistently unleashed in those circumstances when the crimes that the Rome Statute proscribes are committed, with no international mechanism in place to insist upon accountability in the long run.

As a multilateral instrument, the Rome Statute contributes – even if by filling gaps in actionable ways – to make our world a better place. It does so by criminalising wars of aggression and by accentuating the risk of criminal prosecutions when war crimes are committed (as is inevitably the case with every war) as part of armed conflicts notwithstanding who started the shooting; and when crimes against humanity and

genocide are committed (as they often are) under the cover of armed conflicts. In that way, the ICC exerts the needed pressure against the mind-set of those inclined to think little of plunging their own people and others into egotistical armed conflicts.

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Mr President,
Ladies and gentlemen:

Everyone should have access to justice – as the UN's Sustainable Development Goal 16 urges us to ensure.

However, more than 70 UN Member States are currently not party to the Rome Statute. In practice this means that some of the tragic conflicts that vex the world's attention, conscience, and morality are simply beyond the ICC's reach, when crimes of atrocity are committed within the territories of those States that have not ratified the Rome Statute or acceded to it. That is to say, the victims of such atrocities are left to languish outside the zone of punitive and reparative justice created by the Rome Statute system. They are thus three times victimised: by the atrocities that they have endured, to begin with, and by the impunity that the perpetrators would apparently enjoy in the absence of an international court of last resort, and by the absence of any modicum of the reparation of the Rome Statute System has set up.

In the words of Nigeria's President Buhari, *'I urge all States that have not yet done so to, as a matter of deliberate State policy, accede to the Rome Statute ... so that it can become a universal treaty.'*

It is not only a question of what is in it for any particular State – although the general and overall benefits of deterrence in particular are obvious. It is also a question of making a contribution to the collective goals of humanity. Each ratification adds another brick to the wall that protects humanity from the gravest crimes imaginable. Each ratification helps to reduce the space for impunity. And each ratification is a contribution to the spring-well of reparation and assistance that can be drawn upon, in an organised and systematic way, to slake the victims' thirst for justice – even in the most symbolic way – when all else fails.

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Once more, I thank you for your attention. And I wish you a most productive session.

Thank you.

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