



Judge Philippe Kirsch
President of the International Criminal Court

Fifth Session of the Assembly of States Parties

Opening Remarks

The Hague, 23 November 2006

English Version

Thank you Mr. President.
Excellencies,
Distinguished delegates,
Ladies and gentlemen,

It is my pleasure to address you on the occasion of the fifth session of the Assembly of States Parties to the Rome Statute. The annual sessions of the Assembly provide the possibility for States to discuss the Court and its role and direction in broad terms. The Court welcomes the inclusion of a general debate on the agenda of the Assembly and looks forward to your discussions with interest as a source of important feedback for the Court.

In my remarks I would like to speak about:

- First, the Court's activities,
- Second, the role and impact of the Court,
- Third, the importance of cooperation,
- Fourth, the broader system of international justice, and
- Finally, some specific issues before this session of the ASP.

I. The Court's Activities

I will start with the Court's activities since the Assembly last met in The Hague.

As you meet this week and next, on the other side of The Hague a hearing is taking place on the confirmation of charges against Mr. Thomas Lubanga Dyilo. This is a historic moment for the Court. These are the first ever proceedings at the ICC against a charged person. Many of the innovations adopted by States in the Rome Statute are now being put into practice. A Pre-Trial Chamber is determining whether or not to confirm the charges before trial. Victims are participating directly in the proceedings through their legal representatives. Should the charges be confirmed, a trial would start next year.

Over the past year, judicial proceedings have been conducted before the Pre-Trial and the Appeals Chambers. The Chambers have addressed for the first time fundamental issues such as the system for disclosure of evidence, the modalities of victims' participation and the respective roles of the Pre-Trial and Appeals Chambers. The decisions of the Chambers on these issues can have far-reaching implications for the future conduct of proceedings. Resolving basic questions of law and practice can be time-consuming in the short term, but as the Court goes through this process and completes full cycles of activities, its efficiency will increase over time. In the meantime, the Court is committed to reviewing its proceedings for ways to improve efficiency.

Many of the Court's activities take place in the field. The Court operates in circumstances very different from any other court or tribunal. The Court is active in situations of ongoing conflict, where crimes continue to be committed. Security is an omnipresent concern. On occasion, field presences have been temporarily reduced for security reasons. Missions to the field have been cancelled or postponed at the last minute. In addition, the Court faces

significant logistical challenges. The regions where crimes occur are not necessarily easily accessible. In many areas, the Court interacts with victims, witnesses and others who may speak any one of a number of local languages. All of these factors can slow down field operations and in turn cause some delays in proceedings.

Over the past year, the Court has continued to devote considerable emphasis to ensuring an efficient, flexible and transparent administration. Earlier this year, the Court adopted the first-ever ICC Strategic Plan. This is a plan for the entire Court. The fundamental priorities in the Plan include ensuring the quality and effectiveness of the Court's core activities such as proceedings, outreach, securing cooperation and responsibilities towards participants. The Plan also sets out the Court's goal and objectives for becoming a model of public administration. The Court has begun implementing the Plan in different areas of activities. An outreach strategy and a prosecutorial strategy have been developed. In 2007, the Court will continue the implementation of the Plan. The focus will be on those areas where strategic direction is most needed. The Strategic Plan is an internal management tool. However, the Plan should enjoy the support of States Parties. The Court has conducted an initial dialogue with States and welcomes States' comments.

II. The Role and Impact of the Court

I would like to turn now to the role and impact of the Court.

The assessment of the Court's achievements belongs to States. At this stage, and indeed at all times, it is important to continue to keep in mind the reasons why the Court was created. These reasons are set out in the preamble to the Rome Statute – to put an end to impunity for the most serious international crimes, to contribute to the prevention of these crimes, to address the threat such crimes pose to peace and security, to bring justice to victims and to guarantee lasting respect for and the enforcement of international criminal justice.

To achieve these aims, States created the Court as a strong, judicial institution. The Court's role is to carry out fair, credible and efficient judicial proceedings. By doing so, the Court – together with other actors – is expected to contribute to justice, accountability, and ultimately deterrence and peace.

The Court has not completed the first cycle of its activities. It is very early to develop a fully-formed view of the impact of the Court. Nonetheless, there increasingly are indications that the Court is making a difference: by deterring potential perpetrators, by providing hope to victims or by bringing about the conditions for peace. As I said earlier, the Court is operating in situations of ongoing conflict where crimes continue to be committed. This has created practical challenges which I described earlier, but at the same time, it has increased the potential for the Court to contribute to deterring ongoing crimes or fostering conditions for lasting peace in the short term.

The extent of the Court's impact depends on a number of factors. Experience has shown that one such factor is the capacity of the Court to conduct outreach. Local populations

affected by crimes must be able to see and to understand the Court and its activities. The Court has installed outreach teams in both the Democratic Republic of the Congo and Uganda. The Assembly has previously recognized the importance of outreach, and – subject to the Assembly’s approval – the Court will increase its outreach resources and activities next year.

In the future, holding proceedings in or near areas where crimes have been committed may further the impact of the Court. The decision to hold proceedings locally belongs to the judges. The Court has not yet conducted its first trials in The Hague. Nonetheless, the Court is preparing for future proceedings to be held close to areas where crimes occurred. An estimate of the resources needed for local proceedings has been included in the 2007 budget. The Court will further develop options for local proceedings in the context of the Strategic Plan.

III. The Importance of Cooperation

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

The continued support of States Parties is essential to achieving the aims underlying the Rome Statute.

In establishing the ICC, States set up a system designed on two pillars. The Court itself is the judicial pillar. The enforcement pillar belongs to States. In national systems, the two pillars are intertwined. Courts rely automatically on the enforcement powers of the State. In the case of the ICC, the two have been separated. The Court depends on the cooperation of States Parties. With the support and cooperation of States Parties, the Court will continue to be a strong, credible judicial institution.

Part 9 of the Rome Statute provides the legal framework for cooperation of States Parties with the Court. This Part provides a detailed list of the types of cooperation that the Court may request from States Parties. The Court has already made specific requests for cooperation in connection with the current situations on a number of instances. One of the most fundamental needs for cooperation is the arrest and surrender of persons. Without arrests, there will be no trials. Other forms of cooperation include providing evidence or assisting with logistics.

In the absence of specific requests, States that have not yet done so are invited to take a number of important and useful steps in ensuring cooperation. First, States should ensure that they have the necessary implementing legislation to comply with their obligation to cooperate under Part 9 of the Rome Statute. Second, States Parties – and non-States Parties – should ratify the Agreement on Privileges and Immunities of the Court in order for the Court to be able to carry out its functions unimpeded on their territories and to allow the travel of victims and witnesses through their territories to the Court. Third, the Court relies on two types of cooperation agreements. The first are agreements on the relocation of witnesses. It is particularly useful for the Court to conclude relocation agreements with States where witnesses will be able to more easily adapt culturally. Most of the witnesses

will likely come from the countries where investigations occur. The other agreements are agreements which set out a general framework for the enforcement of sentences. So far one State has concluded such an agreement. The conclusion of more agreements is needed.

Cooperation is more easily attained when there is a climate of support for the mandate and work of the Court. The Court relies not only on the Ministries of Foreign Affairs of States Parties and their legal advisors. It also relies on other branches within Foreign Ministries as well as other Ministries. Understanding of and support for the Court throughout all the different arms of a State Party's government can greatly facilitate cooperation.

IV. The Broader System of International Justice

I would like to turn now to the place of the Court within the broader system of international justice.

This system includes other international courts and tribunals such as the *ad hoc* tribunals and hybrid courts. Over the past year, interaction among these courts and tribunals has increased. The staff and elected officials of the ICC often met and shared experiences with their counterparts at the other institutions. Following the acceptance of the request from the Special Court for Sierra Leone by the States Parties, the ICC is providing facilities, services and support to enable the Special Court to carry out the trial of Charles Taylor in The Hague.

The system of international justice extends beyond courts and tribunals. It includes other actors whose work may overlap with the aims in the Rome Statute. There increasingly are discussions of the role of the ICC on issues such as transitional justice, the rule of law or peace negotiations. The ICC does not participate in these discussions. It is a purely judicial institution. However, the outcome of these discussions can have practical implications for cooperation with the Court – for example in the drafting of mandates of peace-keeping or other missions which facilitate cooperation with the Court, or in the operational decisions taken by different actors. A full and accurate understanding of the ICC and of the States Parties' commitment to ending impunity will assist the operations of the Court.

The United Nations has played an important role in ensuring that the principle of accountability for serious international crimes is recognized as a fundamental principle in such settings. The Secretary-General in particular has played a leading role throughout his tenure in building understanding of and support for the Court, including during his visit to the Court in April.

V. Issues before the ASP

I would like now to address in general terms some issues before this session of the Assembly.

The first issue is the proposed budget for 2007. The Court has limited budgetary requests to only those funds which are necessary for 2007. In the case of trials, for example, the determinant for requesting funds is the arrest and surrender of individuals. The budget therefore includes funds only for one trial in 2007. Should other persons be arrested by States and surrendered, the Court would rely on the contingency fund.

The increases over the previous budget are due primarily to existing obligations incurred in the 2006 budget or following decisions of the Assembly in 2005. These include for example the inflation rate or the pension of judges. New resources requested are due to operational needs such as field operations or outreach.

The Court presented the budget to the Committee on Budget and Finance. Consideration of the budget involves detailed issues requiring in-depth discussion in a very limited timeframe. The Court will work with the Committee to strengthen our dialogue in order to ensure sufficient understanding by the Committee of the Court's positions. The Court is of the view that in some areas the recommendations of the Committee need to be reviewed in light of their potential impacts on essential functions. The Registrar will elaborate the Court's positions in more detail during your discussion of the budget.

The other issues before the Assembly which I would briefly mention are those pertaining to the host State. These include the headquarters agreement, the permanent premises and the interim premises.

With respect to the Headquarters Agreement, the Court and the host State sought a comprehensive solution to all issues necessary for the smooth and efficient functioning of the Court. The Court has submitted an agreed text to the Assembly which would enable the Court to efficiently discharge its responsibilities and to fulfil its purposes.

The Court is continuing its preparations for the permanent premises. Earlier this year, the Court reorganized its internal governance arrangements regarding the premises. The Court has begun developing a functional brief containing its core requirements for the premises. Next year, the Court will establish a Project Office to ensure the preparation and management of all tasks necessary for the development of the permanent premises.

The Court has regular contacts with the host State on the interim premises. The host State has identified a new possible solution to the Court's pressing interim premises needs. Assuming this solution could be ready as indicated, the Court still will need a short-term solution to meet its immediate needs without further dispersing the Court's staff to additional locations.

The Registrar will elaborate further on the Headquarters Agreement and on the premises issues during this session.

VI. Conclusion

The Court's initial activities are already being credited with having the impacts envisioned in the preamble to the Rome Statute. This has been made possible by the support and cooperation of individual States Parties and of the Assembly.

In the future, there will be a need for increasing harmonization between the role of the Court and the role of States Parties. This in turn will require continued good mutual understanding between the Court and States Parties which can only be achieved through dialogue. Substantial progress has been made in this regard over the past years. The Court organizes periodic diplomatic briefings and holds other meetings with States or groups of States as opportunities arise. The Working Group of the Bureau established in The Hague has facilitated this dialogue in different areas. The Court would like to express its appreciation to the two Vice-Presidents of the Bureau and to the successive coordinators of the Working Group.

We should build upon these instances and further enhance interactions between sessions of the Assembly. It would be beneficial to develop a sustained strategic dialogue between the Court and States Parties on our common efforts to carry out the mandate of the Rome Statute.

Realizing the aims of the Rome Statute is a shared responsibility of both the Court and States Parties. Through effective, sustained cooperation, the Court and States Parties will continue to achieve notable progress in realizing these aims. The Court looks forward to this session of the Assembly furthering the discussion of the needs and importance of cooperation.

Thank you.