

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Remarks to the 19th Diplomatic Briefing

*The Hague
3 November 2010*

Excellencies,
Ladies and Gentlemen,

On behalf of the International Criminal Court, I would like to extend to all of you a **very warm welcome** to the nineteenth diplomatic briefing of the ICC. I thank you all for coming here today.

As usual, you will hear brief presentations today from myself in my capacity as the ICC's President, then from the **Prosecutor** and the **Registrar** of the Court, and finally from the **Director of the Secretariat of the Assembly of States Parties**.

Afterwards, as always, we will be pleased to take your questions.

Excellencies,

It has been a truly **eventful half a year** since we last met. During these six months, the first **Review Conference** of the Rome Statute was held, **three new countries joined** the ICC, the first ICC arrest warrant for the crime of **genocide was issued**, two suspects **voluntarily appeared** before the ICC, one suspect was **arrested**. For the first time the ICC also formally seized the United Nations Security Council and the Assembly of States Parties of matters concerning the cooperation of states with the ICC.

Let me recall that the ICC has ongoing trials or investigations, or pending warrants of arrest, in relation to **five situation countries**. Three situations were referred to the ICC by the countries themselves, one was referred by the UN Security Council and only the last one, Kenya, was opened at the ICC Prosecutor's own request.

Therefore the **subject matter of ICC's trials in broad terms** has thus far been **determined by States** themselves and not by the ICC, keeping in mind however the Prosecutor's practice of inviting voluntary referrals and his mandate to review whether the statutory conditions are met before deciding whether or not to open an investigation.

In the court's first trial, **Mr Thomas Lubanga Dyilo** is charged with the use of child soldiers under 15 years of age in hostilities in the Democratic Republic of the Congo. On the 8th and 15th of July respectively, the Trial Chamber **stayed the trial and ordered the release of the accused**, considering that a fair trial was no longer possible due to the Prosecutor's refusal to comply with an order of the Chamber.

The Prosecutor lodged an appeal against the decisions to stay the proceedings and to release the accused. Detailed legal submissions and counter-submissions were filed before the Appeals Chamber, not only by the Prosecution and the Defence but also by representatives of victims that participate in the proceedings in accordance with the Rome Statute.

On the 8th of October, only **five weeks**¹ after the last substantive filings were received, the Appeals Chamber delivered its **judgment**. The Appeals Chamber **reaffirmed the authority of the Trial Chamber** and found that the failure by the Prosecutor to comply with judicial orders could undermine a fair trial. However, the Appeals Chamber found that the Trial Chamber was premature in imposing a stay of proceedings without first imposing sanctions to bring about the Prosecutor's compliance with its orders, and accordingly reversed the stay of proceedings and the decision to release Mr Lubanga Dyilo.

¹ The Defence response to the observations of victim representatives was filed on 30 August 2010.

Since the resumption of proceedings, the trial of Mr. Thomas Lubanga Dyilo has experienced some difficulties in bringing witnesses to The Hague but it is moving towards its final stages.

The second trial before the ICC is the case of Mr. Germain **Katanga** and Mr. Mathieu **Ngudjolo Chui**, two alleged former military leaders charged with murder, rape, attacks on civilians, the use of children in hostilities and a number of other crimes allegedly committed in the Democratic Republic of the Congo. This trial has been ongoing since 24 November 2009.

In the situation in the Central African Republic, Mr. Jean-Pierre **Bemba** Gombo is charged with murder, rape and pillage in his alleged capacity as a military commander. The Appeals Chamber dismissed a challenge against the admissibility of the case before the ICC two weeks ago and Mr Bemba's trial is scheduled to **start on 22 November**.

In the situation in Darfur, Sudan, which was referred to the ICC by the United Nations Security Council, a total of **three persons have appeared voluntarily** before the ICC which is a very welcome development, since one of the biggest challenges in international criminal justice is to secure the presence of suspects at the Court.

The hearing on the confirmation of charges against the two persons that voluntarily appeared before the ICC in July, Mr. Abdallah **Banda** Abakaer Nourain and Mr. Saleh Mohammed **Jerbo** Jamus, is scheduled to commence on **8 December 2010**. The allegations against them concern an attack on an African Union peacekeeping mission at the **Haskanita** Military Group Site in North Darfur.

Another group of cases in relation to Sudan concern allegations of a wide range of crimes against **civilians in Darfur**, including murder, rape and forcible displacement. On 12 July 2010, Pre-Trial Chamber I found that there are reasonable grounds to believe that the

President of Sudan, Mr. Omar **Al-Bashir**, is responsible for **genocide** committed against the Fur, Masalit and Zaghawa ethnic groups in Darfur.

The Pre-Trial Chamber accordingly issued a **second warrant of arrest** against Mr. Al-Bashir, following an earlier warrant from March 2009 in relation to crimes against humanity and war crimes.

Unfortunately, **none of the three persons suspected of the crimes against civilians in Darfur have been brought to the ICC to date.**

Let me recall that this is a **matter of common concern** to the **international community as a whole**. In Resolution 1593, the Security Council found the situation in Sudan constitutes a **threat to international peace and security** and it referred the alleged crimes to the ICC, **obliging Sudan to cooperate** fully with the ICC and urging all other States to cooperate as well.

In May this year, the ICC's Pre-Trial Chamber for the first time made a **formal finding of lack of cooperation** by a State, holding that Sudan was not cooperating in the case of two suspects, Mr. Ahmad Harun and Mr. Ali Kushayb. The Chamber accordingly **informed the Security Council** for it to take any appropriate action.

Additionally, in August, the ICC's Pre-Trial Chamber informed the Assembly of States Parties and the Security Council of Mr. Al-Bashir's visits to two States Parties, **Kenya and Chad** despite the outstanding ICC arrest warrants against him.

Now let me move on to the situation in the **Democratic Republic of the Congo**. Last month, on 11 October, we received the excellent news that Mr. **Callixte Mbarushimana**, suspected of crimes against civilians in the Kivus region, was arrested in Paris, for which we are deeply grateful to the French authorities. His transfer to the ICC is pending.

Unfortunately, the arrest warrant against **Mr. Bosco Ntaganda** is still pending, as well as the warrants issued more than **five years** ago against the four alleged leaders of the **Lord's Resistance Army** in connection with the situation in **Uganda**.

The failure to execute these arrest warrants is having a **devastating effect on victims** and the communities affected by the crimes under the ICC's jurisdiction.

I once again appeal to States to assist us since the ICC is **completely reliant on state cooperation** in the execution of its orders and decisions.

As our time is limited, I will not go into any details concerning the **Kenya** situation, which is for the time being mainly in the realm of the Prosecutor, since he has not yet brought any cases to the Pre-Trial Chamber.

Excellencies,

This concludes the update on judicial activities and I would now like to say a few words about the development of the **wider Rome Statute system**.

If we are truly intent on ending impunity, then **we must look beyond the ICC**. I hope that now that the definition of the crime of aggression has been resolved, States will be able to devote their full attention to **cooperation, complementarity** and **universality** which were identified in Kampala as being key issues for the development of the Rome Statute system.

I already touched on the challenges related to **cooperation**. Let me add one aspect, which is the **enforcement of sentences**. This is becoming increasingly relevant, as the first trial

approaches its conclusion. Five Western European States have concluded agreements with the ICC on this matter and I am grateful to them, but as always, I urge more States to consider this possibility so we can expand our options to other regions as well.

When it comes to the fundamental principle of **complementarity**, a very central notion that is emerging is the need to bring closer together **international criminal justice** on the one hand and **rule of law development** on the other hand.

During last week in New York, I participated in very interesting discussions on this matter, and attended a high-level event which brought development aid actors and donors to the same table with criminal law experts. I believe that the United Nations is well placed to further enhance the coordination of these developments and I call on all States to contribute to this continuing discussion.

Finally, I am delighted to welcome **Seychelles, Saint Lucia** and **Moldova** to the ICC family. I hope that all States will continue to use their bilateral and multilateral contacts to promote global ratification the Rome Statute.

Excellencies,

The ICC is increasingly busy on the judicial front, and for instance this week **nine trial hearings** are taking place in our two courtrooms. With the imminent start of the third trial, the ICC's **judicial activity is reaching a new high.**

As the ICC matures and develops, the support and assistance of the States Parties and the international community as a whole will remain as crucial as always. I am sincerely grateful for your presence here and the continued attention that your States continue to pay to the work of the ICC.

I thank you for your attention and I look forward to taking your questions later.

Now let me give the floor to the Prosecutor.

[end]