

**Cour
Pénale
Internationale**

**International
Criminal
Court**

**ADDRESS BY JUDGE PHILIPPE KIRSCH
PRESIDENT OF THE ICC**

**THIRD SESSION OF THE ASSEMBLY OF STATES PARTIES
TO THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT**

The Hague, 6 September 2004

Mr. President,

It is my pleasure to address the first Assembly of States Parties to meet in The Hague. As the Court begins to exercise its judicial functions, it is of special significance that you are holding your annual meeting here at the seat of the Court.

At last year's Assembly of States Parties, I stressed the significance of the Court's transition from an aspiration to a functioning institution. This year, we mark another **important transition, from the set-up phase of the Court to the commencement of its judicial functions**. In the two years since the Statute of Rome entered into force, the Court has strived to put in place the necessary framework to begin judicial activity. This work is now largely complete. The Court is ready to begin proceedings in its first cases, which could start at any time. Today, I will briefly review the work done over the past year to reach this point, and I will identify the main tasks which lie ahead.

States Parties have referred two situations to the Prosecutor. In both situations, the Prosecutor has decided to open an investigation: the first in the Democratic Republic of the Congo and the second in Uganda. The Prosecutor will provide you with more information on the activities of his office. For the Court as a whole, it is significant that the first two situations facing the Court stem from referrals by the governments most directly concerned with the situations.

The Judges have been hard at work laying the foundation necessary to hear the first cases. In June of this year, three Pre-Trial Chambers were constituted. They are ready to begin proceedings. The situation in the Democratic Republic of the Congo has been assigned to Pre-Trial Chamber I, while the situation in northern Uganda has been assigned to Pre-Trial Chamber II. The Appeals Judges are also permanently based at the Court, ready for any appeals which could arise as soon as the Pre-Trial Chambers hand down their first orders or decisions. All of the judges continue to conduct extensive preparatory work in order to enable the Chambers to carry out their functions as effectively as possible.

In May 2004, the **judiciary adopted the Regulations of the Court**. The Regulations cover a broad range of issues including the composition and administration of the Court, proceedings before the Court, counsel issues and legal assistance, victims participation and reparations, detention matters, cooperation and enforcement, removal from office, and disciplinary measures. These Regulations also provide a framework for drafting a Code of Judicial Ethics and establishing an Advisory Committee on Legal Texts which will assist in preparing amendments to the Regulations, Rules of Procedure and Evidence, and Elements of Crimes. An online public hearing was held to seek the views of the public on victims and defence issues. In their preparation of the Regulations, the judges did their utmost to ensure the efficiency, fairness, and transparency of proceedings, drawing lessons as necessary from past practice, including the *ad hoc* tribunals.

These Regulations have been submitted to the States Parties in accordance with Article 52 of the Rome Statute. Several of my fellow judges will make a **presentation for representatives of States Parties** during an informal meeting this week. Although the Regulations are not formally before the ASP, we wanted to take the opportunity of your presence in The Hague to provide you with a first-hand introduction to the Regulations and give you the chance to ask questions.

The Court is now also **equipped with the physical structure required for its initial proceedings**. A pretrial courtroom is ready, and the first courtroom for trial proceedings will be completed towards the end of this year. I would like to thank the Host Country for their support in providing the proper forums for our proceedings. We look forward to a sustained and fruitful dialogue with the Host Country in this and other matters.

The Judiciary continues to plan **for future developments**. It is only a matter of time before the Trial Chambers will be called upon to exercise their functions. Based on the plans of the Prosecutor, the Court plans to have the first Trial Chamber ready to operate by the beginning of next year. This will require adding trial judges to the roster of judges sitting full-time in The Hague.

Beyond judiciary matters, all organs of the Court unequivocally share the view of external supporters and observers that it is important for the Court to enhance its own internal coordination. Indeed, a central part of the Court's development in the past few months has been the cultivation of effective working relationships within the Court. Naturally, at this work developed, divergent perspectives have arisen on occasion as a result of the different and independent roles of the organs and also the rapidity of their preparations for the judicial phase of the work of the Court. Whenever differences have been identified, the organs have undertaken sustained consultations to formulate common objectives and strategies, subject to the requirements of the Rome Statute. The Court as a whole has therefore been working hard towards developing **a united approach to issues of common concern**. For example, since the time of the budget, considerable work has been done in that direction in such areas as victims, outreach and field presence. Strong cooperation between organs was also manifest in the joint OTP-Registry reconnaissance missions to the Democratic Republic of the Congo and Uganda. I personally consider unity, coordination and cooperation among the organs of the Court essential for the strength and success of the Court. Indeed, in recent months, at the request of the Presidency, the meetings of central mechanisms such as the Coordination Council have intensified considerably in their frequency and scope. Other regular meetings between organs have also increased significantly in order to both address specific issues and ensure continuous general coordination. Coordinating among the organs is necessarily an ongoing task and one which will continue to be carried out as intensively as necessary.

Coordination and cooperation are not only matters of concern to the Court's internal functioning. **Cooperation between the Court and the Assembly of States Parties** is also essential to a strong Court. The Court would welcome enhanced dialogue with the ASP and the bureau through appropriate mechanisms, provided the necessary conditions exist. First, such mechanisms must of course clearly operate within the mandate of the ASP under the Rome Statute. Second, to avoid fragmentation, a coordinated approach is imperative. In the view of the Court, the bureau has a natural and necessary role to play in any means or methods of coordinating between the Court and the ASP. Third, dialogue is essential for both the Court and the ASP to make our respective decisions with the benefit of a full mutual understanding of each other's concerns and positions.

In the same spirit, **effective communication is important to the relationship between the Court and the Committee on Budget and Finance**. I have recently sent a letter to the Chairman of the CBF aimed at improving the exchange of information between the Court and the CBF.

As I indicated, an enhanced dialogue with the ASP is of great interest to the Court. In some instances, matters of great concern to the Court are primarily the responsibility of the ASP. The payment of assessed contributions by States Parties is such an instance. While the Court is actively monitoring this situation, the Court would appreciate an active role of the Assembly in ensuring that all States Parties pay their arrears in full.

I would now like to outline for you the **position of the Court** on the issues before this meeting of the ASP.

The Court is well aware of the financial constraints which shape its budget. After extensive, rigorous discussions among and within the different organs, the Court has drafted a **budget closely tied to its operational needs**. The Court was unremitting in its efforts to ensure that every item in the budget is justified by necessity. In some instances, the novelty of the Court and the lack of jurisprudence created inevitable uncertainties in arriving at a definitive assessment of needs. These uncertainties are reflected in the diverse range of comments made on the budget by the Committee on Budget and Finance and others

such as NGOs, including recommendations and views that differ significantly regarding the nature and size of the resources required by the Court. The uncertainty should diminish in future budgets.

The helpful proposal of the CBF to create a contingency fund may reduce some of the uncertainty in the budget. This fund could prevent allocated resources going unused and guarantee that essential but difficult to estimate tasks such as meeting the needs of victims, outreach, or the maintenance of field offices are adequately covered. **Any contingency fund must, however, respect the need for the Court to be independent in the exercise of its judicial functions.** In particular, the conditions for access to the fund's resources must be consistent with the independent, impartial, and judicial nature of the Court.

Such a fund increases the ability of the Court to adapt to different situations. This permits reducing some of the proposed funding in several areas. However, **if the contingency fund were not to be established, it would be absolutely imperative that these cuts be restored.** Otherwise, the Court will be left unable recommended to carry out its essential functions.

In addition, in the view of the Court, some resources for which cuts have been recommended should be maintained irrespective of the creation of a contingency fund, as will be explained in due course by the registrar

I will turn now to future budgetary prospects. Many of the Court's initial investments in infrastructure are already finalized or in an advanced stage of implementation. As a result, these investments will no longer be a driving force behind the annual budgets. Having reached our core capacity and infrastructure in almost all areas, we anticipate that future budgets will be predominantly "case-driven." As such, **major increases in the overall budget are unlikely in the coming years.**

In this connection, I should specify that some figures relating to future staff numbers or costs of permanent premises which have been mentioned, for example in the report of the CBF, do not reflect the current planning of the Court and were not intended to forecast the development of the staff. These figures were used to define parameters relevant for the size of the proposed site for the permanent premises and the requirements with regard to traffic space, surrounding areas, building capacities and other infrastructure needs, but were certainly not intended to give a projection on the proposed or desired growth of the Court. To be very clear: **any growth within the court will depend solely on its workload with regard to investigations and judicial proceedings.** Under any circumstances, the Court remains committed to restraint in increasing the budget only when strictly necessary.

I would like to turn to some more specific aspects of the budget:

As observed by the CBF and several NGOs, the Court provided only for limited resources for **field presence** in its draft budget programme. When the Court started the discussions about a future field presence, it was not yet possible to accurately estimate the needs. Since then, as mentioned earlier, two joint OTP – Registry reconnaissance missions to the field have been undertaken. On the basis of their findings, it is now possible to provide you with a clearer picture as to the specific needs of a field presence. The Registrar will inform you further on these needs.

The CBF also examined the report from the Registry on the establishment of a New York liaison office. The Court believes that **a liaison office in New York is urgently needed and should be included in the budget.** The UN Relationship agreement requires extensive cooperation between the Court and the UN. This Agreement will have to be implemented over the coming year. At the same time, the Court will also need ready and immediate access to the UN and its resources in the investigation and prosecution of the situations in the Democratic Republic of Congo and northern Uganda as well as in future situations.

It is essential that we **establish a pattern of regular cooperation with the UN from the beginning of the Court's operational work.** This is particularly important if the Court is to have observer status in the

General Assembly as is envisioned in the draft relationship agreement. It will be much more difficult to develop a cooperative relationship once proceedings have begun. In addition, a liaison office will strengthen the links between the Court and the many States Parties which do not maintain a regular presence in The Hague as well as other UN Member States.

To reiterate, the Court is cognizant of the limited available resources and therefore has proposed **creating only the core of a liaison office now**. Subject to the approval of the ASP, this office would consist of one professional-level staff member and one General Service assistant, to be hired in an open and transparent manner, involving representatives of both the Court and the ASP in the decision. This minimal staff would concentrate on setting up the office and fulfilling urgent needs. In the Court's view, this core can easily be developed in coming years into a more robust office as needs demand and resources permit. Initially, we therefore urge the Assembly now to support the establishment of a modest New York liaison office.

I now turn to the issues other than the budget. The **Relationship Agreement with the United Nations** is also before this ASP. On the basis of the initial draft Relationship Agreement adopted by the PrepCom and approved by the ASP, an ICC delegation entered into negotiations with the UN. All organs of the Court, led by the Presidency, participated in the negotiations. After two rounds of negotiations in New York and an exchange of several letters, the negotiated draft Relationship Agreement was initialed on 7 June by the heads of the ICC and UN delegations. On behalf of the Court, I would like to thank the United Nations for their cooperation in coming to a speedy conclusion of the negotiations. We hereby submit this Draft Agreement for your approval in accordance with Article 2 of the Statute.

The Court has also submitted the draft **Code of Professional Conduct for Counsel** for your approval in accordance with Rule 8 of the Rules of Procedure and Evidence. In preparing the draft Code, the Registrar consulted extensively with lawyers, law professors, representatives of *ad hoc* tribunals, and bar associations, including the International Criminal Bar. Two rounds of consultations were held with six major professional associations. The results of an on-line public hearing on Defence issues in the Regulations were also taken into account. Due concern was paid to incorporating approaches from different continents and different legal systems. The Prosecutor was also consulted in the preparation of the Code as required by the Rules.

The Code aims to establish **general and fundamental principles of ethical conduct** applicable to counsel appearing before the ICC. It governs the obligations of counsel towards their clients, the Court, and other participants in proceedings. In light of the two situations presently before the Court, the Presidency would like to stress the importance of promptly adopting the Code so that counsel may appear before the Court. The Court recognizes need to amend the Code may subsequently arise, and Article 3 of the Code provides means for amendment.

I would also like to draw your attention to the **Proposal regarding conditions of service and compensation of judges and elected officials**. The Court submits this proposal to the ASP for decision in accordance with Article 49 of the Statute. Each organ has prepared its own draft conditions of service and compensation which are elaborated in three separate annexes to the proposal. Each annex will be presented by the respective organ. On behalf of the Chambers, I would like to briefly introduce the first annex dealing with the conditions of service of the judges.

The conditions of service and compensation of judges were agreed upon at the first ASP and revised during the second meeting last year. **Important issues such as disability pensions and child benefits have not yet been adequately addressed**. The proposal submitted to you addresses these issues and clarifies existing provisions.

Our proposal also includes a memorandum seeking to avoid inequities in the **disability and retirement pension benefits** of the first judges of the Court. Disability benefits should be independent of the length of a judge's term. As for retirement pensions, the current requirement that judges serve full-time for three years to be eligible for retirement benefits may lead to no pension at all for the first judges elected to three-year terms if they are not reelected. Pensions for these judges should be calculated *pro rata*, based on the length of their full-time service. These proposals do not have any budgetary implications for 2005 but should be taken into consideration in drafting future budgets.

The last issue before the ASP which I would like to mention is the **trust fund for the participation of least developed countries** in the activities of the Assembly of States Parties. The Registrar has established this trust fund pursuant to Resolution ICC-ASP/2/Res.6. Negotiations are on-going with the United Nations for the transfer of any remainder in the special fund previously established by the General Assembly. States have been invited to make voluntary contributions to the trust fund. I thank all States that have made contributions and encourage more voluntary contributions. Through this trust fund and other efforts such as a New York Liaison Office, you can ensure that all States Parties have a meaningful voice in the activities of the Assembly and the direction of the Court.

I would now like to turn briefly to a few **longer-term issues** affecting the Court which require action by the States Parties.

States Parties can provide crucial support to the Court by ratifying the **Agreement on Privileges and Immunities**. Wide ratification of this agreement is necessary for the Court's personnel to properly fulfill their responsibilities. To date, twelve countries have ratified this Agreement which entered into force on 22 July 2004. I urge all States Parties that have not yet done so to ratify this essential agreement.

Universal ratification of the Rome Statute remains an essential long-term objective of the Court. Universality is necessary to establish a truly global reach in the fight against impunity. I therefore reiterate my call to all States Parties, as well as inter-governmental organizations and NGOs, to continue their efforts towards universal ratification.

I have spoken at length about the specific work of the Court and items before the ASP. All of this work is necessary to achieve the **broader objectives of the Court**, of which we should not lose sight in considering the issues of the day. In his recent report on *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, the UN Secretary-General described the ICC as "the most significant recent development in the international community's long struggle to advance the cause of justice and rule of law." We at the Court were particularly heartened that the Secretary-General noted in his report that "the Court is already having an important impact by putting would-be violators on notice that impunity is not assured and serving as a catalyst for enacting national laws against the gravest international crimes."

The Secretary-General continues to stress that it is "crucial that the international community ensures that this nascent institution has the resources, capacities, information and support it needs to investigate, prosecute and bring to trial those who bear the greatest responsibility for war crimes, crimes against humanity and genocide." **Such cooperation is particularly important now that the Court is beginning to exercise its judicial functions.** The investigation and prosecution of cases will not only require the active participation of those countries where the investigations take place, but will also call upon all states which may be able to assist by providing information, evidence, or other forms of cooperation. I ask for your assistance in ensuring the Court has all the support necessary to act fairly, efficiently, and expeditiously.

The international community has high hopes for the Court. We cannot, and will not, fail.

Thank you.