



Address to the Assembly of States Parties

30 November 2007

*Judge Philippe Kirsch
President of the International Criminal Court*

(Français/English)

Monsieur le Président,

C'est avec grand plaisir que j'interviens à la sixième session de l'Assemblée des États parties.

Je voudrais souhaiter la bienvenue aux représentants des nouveaux États parties, à savoir le Japon et le Tchad, qui se sont joints à la Cour cette année. Comptant 105 États parties, la Cour a accompli plus de la moitié du chemin vers l'objectif de l'universalité. Alors que nous nous approchons du dixième anniversaire de l'adoption du Statut de Rome, il est important que le nombre des adhésions et des ratifications continue d'aller croissant.

Dans mon intervention, j'aborderai les points suivants :

- Les activités de la Cour depuis la cinquième session de l'Assemblée,
- La coopération entre la Cour et les États, les organisations internationales et la société civile, et
- Des questions particulières inscrites à l'ordre du jour de l'Assemblée.

I. Activités

A. Procédures

Je vais vous parler d'abord des activités récentes de la Cour, en commençant par les procédures judiciaires.

S'agissant de la situation en République démocratique du Congo, deux affaires, concernant deux individus actuellement détenus, sont pendantes devant la Chambre préliminaire I et la Chambre de première instance I.

En janvier, la Chambre préliminaire I a confirmé les charges de crimes de guerre suivantes à l'encontre de Thomas Lubanga Dyilo : le fait d'avoir procédé à l'enrôlement et à la conscription d'enfants âgés de moins de 15 ans et de les avoir fait participer activement à des hostilités. La Chambre de première instance I examine actuellement des questions devant être tranchées avant l'ouverture du procès prévue en mars 2008.

Les procédures préliminaires sont en cours dans l'affaire contre Germain Katanga, qui a été remis à la Cour le 18 octobre. Le mandat d'arrêt délivré à son encontre comprend trois chefs de crimes contre l'humanité et six chefs de crimes de guerre : meurtre, actes inhumains, esclavage sexuel, homicide intentionnel, traitements inhumains ou cruels, attaque contre des personnes civiles, pillage ainsi que le fait de faire participer activement des enfants de moins de 15 ans à des hostilités. L'audience de confirmation des charges devrait commencer en février.

En ce qui concerne le Darfour, au Soudan, la Chambre préliminaire I a délivré en mai des mandats d'arrêt à l'encontre de deux personnes. Ahmad Harun et Ali Kushayb sont tous deux recherchés pour répondre de plus de quarante chefs de crimes contre l'humanité et de crimes de guerre, dont le meurtre, la persécution, des transferts forcés de populations, des attaques contre des civils, le pillage et la destruction ou la saisie de biens de l'ennemi. La

Cour a transmis aux États des demandes d'arrestation et de remise de ces deux suspects. Aucun des deux mandats d'arrêt n'a été exécuté à ce jour.

En ce qui concerne la situation en Ouganda, qui relève de la Chambre préliminaire II l'un des suspects recherché par la Cour a été tué, privant ainsi d'objet le mandat d'arrêt le concernant. Les quatre autres mandats n'ont toujours pas été exécutés.

Avec ces premières affaires, nous voyons les dispositions du Statut de Rome passer de la théorie à la pratique. Les chambres préliminaires, une innovation du Statut de Rome, ont achevé le premier cycle d'activités dans une affaire. Autre exemple d'innovation du Statut de Rome, la participation des victimes aux procédures en leur nom propre. Dans ces domaines comme dans d'autres, la Cour s'engage à assurer des procédures équitables et diligentes. Les juges sont en train de résoudre des questions fondamentales de droit et de pratique. Nous pouvons donc nous attendre à ce que l'efficacité des procédures s'accroisse, une fois résolues ces questions fondamentales, dans le respect du Statut de Rome et du Règlement de procédure et de preuve.

B. Activités sur le terrain

Je voudrais vous parler maintenant des activités de la Cour sur le terrain.

Bien que le siège de la Cour se trouve à La Haye, celle-ci est très présente sur le terrain. La Cour dispose aujourd'hui de cinq bureaux dans les pays où le Procureur mène des enquêtes, ou à proximité de ces pays. Le dernier bureau s'est ouvert en octobre en République centrafricaine, par suite de la décision du Procureur d'ouvrir une enquête sur la situation dans ce pays.

L'une des fonctions premières de ces bureaux extérieurs est de mener des missions de sensibilisation auprès des populations locales. Les bureaux extérieurs eux-mêmes servent de vitrine de la Cour au niveau local. À la suite de la décision prise l'an dernier par l'Assemblée d'augmenter les ressources allouées à la sensibilisation, la Cour poursuit l'application du Plan stratégique en matière de sensibilisation dans les différentes situations. Des équipes de sensibilisation sont basées sur le terrain en Ouganda et en République démocratique du Congo. Dans la situation au Darfour, la Cour a mené d'importantes activités de sensibilisation, notamment au Tchad, dans des camps de réfugiés. J'ai appris que des États parties organisent une réunion sur la sensibilisation au cours de cette session. Des représentants de la Cour seront disponibles pour fournir de plus amples informations sur les activités de sensibilisation de la Cour.

C. Administration

Je voudrais maintenant mentionner des activités récentes de la Cour dans le domaine administratif.

En 2007, la Cour a poursuivi l'application du Plan stratégique. Parmi les tâches prioritaires, la Cour s'est attachée en particulier à appliquer le Plan stratégique en matière de

sensibilisation, à élaborer des stratégies sur les questions liées aux victimes, aux ressources humaines et au processus de décision entre organes. La Cour est actuellement en train de revoir ses priorités, ses plans et ses processus pour améliorer l'application du Plan stratégique en 2008. Pour ce qui est de l'application du Plan stratégique dans les autres domaines administratifs, le dialogue engagé avec les groupes de travail du Bureau, à La Haye et à New York, a été très bénéfique à la Cour et celle-ci tient à exprimer toute sa reconnaissance aux coordinateurs et aux facilitateurs de ces groupes. En 2008, la Cour va continuer d'œuvrer en vue de renforcer le dialogue stratégique et global avec ces organes.

II. Cooperation

Mr. President,

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

The success of the Court is the common aim and collective responsibility of the Court, States Parties, international organizations and civil society.

States have the right to expect that the Court does its utmost to ensure the Rome Statute system works as efficiently and as effectively as possible. The Court fully shares these objectives. Since its inception, the Court has striven to meet the high expectations of States and other stakeholders. At the same time, the relationship between the Court and States Parties is not just about dialogue on administrative issues and managerial oversight of the Court by the States Parties. The Rome Statute entrusts States with substantial responsibilities to ensure the success of the ICC system. These obligations are set out in the Rome Statute and were recently elaborated in the report of the Bureau on cooperation. They include ensuring sufficient implementing legislation, respecting the judicial process and cooperating fully with requests of the Court. Some States have received such requests deriving from case-related decisions by the Court. Others may be especially well-placed to provide operational support in a given situation. However, it is the collective responsibility of all States to support and cooperate with the work of the Court.

In the past year, States Parties contributed 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. States Parties also 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.

International and regional organizations also provided critical support to the Court. Among these, the support and cooperation of the United Nations has been particularly valuable to the Court, especially in the field. The Secretary-General's presence at this session of the Assembly reaffirms the importance of this special relationship to both institutions. Since the conclusion of the Relationship Agreement, the Court and the United Nations have constantly deepened our mutual relations. The New York Liaison Office of the Court is helping to further strengthen communication and relations between the Court and the United Nations. On a regional level, the Court has had regular exchanges with the

European Union and looks forward to concluding a memorandum of understanding and developing its cooperation with the African Union.

The Court greatly appreciates the important contributions of civil society to a strong, impartial and effective Court. Civil society organizations have been essential in promoting ratification in many States. They have assisted in ensuring the Court receives necessary cooperation by urging States to adopt implementing legislation and providing assistance or guidance on how to do so. They have raised awareness and understanding of the Court, its role and the importance of justice at critical junctures where others have been silent. The continued support of civil society in these areas, as well as their independent observations on the activities of the Court, will remain important for the future.

Mr. President,

Based on the Court's experience over the past year, I would like to outline three areas in which cooperation and support will need to continue, and indeed to be enhanced, to sustain the credibility and effectiveness of the Court.

First, operational cooperation will continue to be critical to the functioning of the Court. A number of direct requests for cooperation have not yet been fulfilled. Of these requests, the outstanding warrants of arrest are the most significant. The lack of arrests goes directly to the credibility of the system that States established in the Rome Statute. Without arrests, there can be no trials. Without trials, victims will again be denied justice. The potential deterrent effect of the Court will be lessened. The outstanding warrants are a concern of all States Parties. Ensuring their execution is a collective challenge.

In addition to arrests and again in the area of operational cooperation, assistance in the relocation and protection of victims and witnesses is of pressing importance. The number of persons seeking protection or being accepted into the Court's protection programme has increased dramatically. I invite States that have not yet done so to consider concluding agreements with the Court or to consider how they may assist willing States to develop their domestic capacities to provide support to the Court.

Second, States must ensure full respect for the Court and its judicial processes. This has not always been the case in practice. It is clear of course that the situations and cases before the Court are linked to broader complex political issues and developments. This does not absolve States of their responsibilities to comply with their legal obligations and to remain engaged with the judicial process. 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. Similarly, it must be clearly understood that the Court is bound to adhere strictly to and its judicial mandate cannot go beyond or deviate from that mandate.

Third, public and diplomatic support for the Court and for international justice more broadly is vital to a strong and effective Court. Earlier this year, relative silence was observed in situations where public support for the Court and for the need for justice more broadly would have been expected. Silence in these situations may send, and indeed has

sent, the wrong messages to perpetrators and potential perpetrators of serious international crimes. Strong public support is essential to demonstrate that the Court has the backing to be effective. It is also important that States Parties provide diplomatic and public support more generally, both in their bilateral relations and in multilateral fora, including during the general debate of the Assembly. 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 enforced and that the international community's commitment to justice will be upheld.

There is also a domestic element to increasing support for the Court. The affairs of the Court are not the sole province of ministries of foreign affairs and their legal departments. As the Court's operations have expanded, it has come increasingly into contact with other departments, other ministries and other branches of government. To be effective, the Court needs governments to ensure the sustained support of all those throughout their national systems who interact with or who work on issues and situations related to the Court.

Past experience has confirmed the deep commitment of States Parties to the Rome Statute and to its underlying principles. As the Court's operations have developed, there have been new challenges for both the Court and for States Parties in practice. The Court has had opportunities recently to draw the attention of States Parties to the areas where cooperation is needed. Their reactions have been encouraging for the future and have indeed already resulted in tangible, positive developments in the last few months. I am confident that the Court will be able to count on the strong support and cooperation of States Parties, international organizations and civil society now and in the future.

III. ASP Issues

Mr. President, I would now like to comment on two issues on the agenda of this session of the Assembly.

I would start with some general remarks on the budget. The Registrar will present the Court's position in more detail next week. The Court has worked with the Committee on Budget and Finance to continue to improve both the structure and content of the budget. The Court is pleased with its relationship with the Committee. The Court accepts that it has to address the underspending of the budget and agrees with the Committee's recommendations on this issue. However, proposed cuts are of concern in two areas. First, the Court is concerned about proposed cuts to the legal aid budget. Provision of adequate legal assistance is essential to the fairness of trials. Second, the Court is concerned about the recommended cuts to the budget for interim premises. The Court has achieved maximum occupancy in its current premises. As recruitment processes speed up, there is urgent need to find additional space. The Court and the host state are currently trying to find an intermediate solution.

The other issue before the Assembly on which I wish to comment is the permanent premises. Establishing permanent premises in a sound and timely manner is of particular importance to the Court. For several years, the Court and the Assembly have worked towards the establishment of permanent premises. Over the past year, the Court participated in an extensive and fruitful dialogue together with the Working Group of the Bureau and the Host State. As a result of this dialogue, the Court believes that the Assembly now has the information necessary to move to the next step in the process. The Court considers that the proposal reflected in the draft resolution prepared by the facilitator provides a sound basis to proceed.

IV. Conclusion

Mr. President,

On 17 July next year, the world will celebrate the tenth anniversary of the adoption of the Rome Statute and will ask what has been achieved. We – the Court, States Parties, international and regional organizations and civil society – have already made significant progress. The Court is fully operational. Investigations and proceedings are ongoing in four situations. Victims are participating in proceedings and the Trust Fund for Victims is functioning. Most importantly, it is increasingly recognized that the Court is having the impacts for which it was created by the States Parties by contributing to the deterrence of crimes and improving chances for sustainable peace.

Notwithstanding this progress, we have only begun to achieve the objectives expressed in the preamble to the Rome Statute. The need of victims - and of the international community as whole - for the Court remains as fundamental today as it was in Rome on the 17th of July 1998. Working together, we can ensure that the Court makes lasting and sustainable contributions to justice, peace and accountability around the world. The Court knows it can count on your cooperation.

Thank you.