

Newsletter

December 2006 #11

Cour
Pénale
Internationale

International
Criminal
Court



Editorial p.1 | Investigations in Darfur almost complete p.1 | The Assembly of States Parties holds its fifth session p.2 | 2007 budget approved by the ASP p.3 | First ICC confirmation of charges hearing concludes *The Prosecutor v Mr Thomas Lubanga Dyilo* p.4 | ICC publicises the hearing p.4 | Trust Fund for Victims holds third annual meeting p.5 | President Philippe Kirsch visits Japan p.5 | President of the Republic of Bolivia visits the ICC p.6 | Court briefing in the seat of the African Union p.6 | COJOUR and the ICC meet in The Hague p.6 | The Registrar visits New York p.6 | Strategic Plan Workshops for the Registry p.7 | The ICC plans new premises p.7 | Latest Public Legal Filings p.8 |

Editorial

The fifth session of the Assembly of States Parties was held in The Hague from 23 November to 1 December 2006. For the first time, there was a general debate, and States were able to express their views on the Court and its achievements. The Assembly was characterised by a convivial working atmosphere reflecting the good relationship between the Court and the States Parties. This issue of the Newsletter reports on the work of the Assembly, including its major outcomes in terms of budgeting and institutional development.

Regarding the judicial activities of the Court, this issue includes a summary of the confirmation of charges hearing in the case of *The Prosecutor v. Thomas Lubanga Dyilo* as well as a report on the public information and outreach activities undertaken. These efforts highlight our desire that the people concerned are informed of what the Court is doing.

Lastly, we also report on the third annual meeting of the Trust Fund for Victims and plans of the Board of Directors for 2007.

Bruno Cathala, Registrar

Investigations in Darfur almost complete

ICC Prosecutor Luis Moreno-Ocampo informed the UN Security Council that he has nearly completed an investigation into some of the worst crimes committed in Darfur. In a statement on 14 December, the Prosecutor told the Council that the evidence collected points to specific individuals who appear to bear the greatest responsibility for war crimes and crimes against humanity, including persecution, torture, murder and rape. The Prosecutor announced that he is preparing to submit evidence to the ICC judges in February 2007.

The investigation focuses on a series of incidents that occurred in 2003 and 2004. The evidence comes from a wide range of sources, including statements from victims as well as Sudanese officials and materials provided by the Government of the Sudan, the National Commission of Inquiry, the International Commission of Inquiry, the Security Council, states and international organisations.

The Prosecutor spoke of the co-operation received from the Government of the Sudan. He described four previous visits by his staff to the Sudan, including interviews in August 2006 with two senior Government officials. The Prosecutor said that he will request that the Government facilitate a fifth visit in January 2007, noting that there are outstanding requests for a number of documents and interviews.

Throughout the process, the Prosecutor has given careful attention to the issue of admissibility. In November the Prosecutor requested updated information about national judicial proceedings from the Government of the Sudan. In a formal reply, the Government reported that 14 individuals have been arrested for violations of international humanitarian law and human rights abuses. The Prosecutor told the Council that this reported activity does not appear to render the current case inadmissible.

By its referral of the situation in Darfur to the Court in March 2005, the Security Council reaffirmed that peace and security require justice. As the Prosecutor moves towards completion of the investigation, it sends a signal to those who are considering committing further crimes that they cannot do so with impunity. "These perpetrators are standing in the way of peace and security", the Prosecutor told the Council.

The Assembly of States Parties holds its fifth session



President of the ASP Mr Bruno Stagno Ugarte opens the plenary / ICC-ASP

The fifth session of the Assembly of States Parties met on 23 November until 1 December. Mr Bruno Stagno Ugarte (Costa Rica) as president opened the proceedings, and welcomed the members to The Hague.

General debate

A total of forty-three States Parties, four observer States, three inter-governmental organisations and eight non-governmental organisations participated in the general debate, which was held for the first time. (Statements are available on www.icc-cpi.int/asp.html)

Second election of the members of the Board of Directors for the Trust Fund for Victims

The Assembly re-elected the following four members of the Board of Directors of the Trust Fund for Victims: Archbishop Desmond Tutu (South Africa), Mr Tadeusz Mazowiecki (Poland), Mr Arthur N R Robinson (Trinidad and Tobago) and Ms Simone Veil (France). The three year term of office for each board member will run from 1 December 2006. Due to the fact that at the end of the nomination period, no candidate had been nominated by the Group of Asian States, the Assembly decided to defer the election for the seat to the resumed fifth session of the Assembly, to be held instead at the end of January 2007 at the United Nations Headquarters in New York.

Headquarters agreement between the International Criminal Court and the host State

In accordance with article 3, paragraph 2, of the Rome Statute, the Assembly approved the headquarters agreement between the Court and the host State, and requested the President of the Court, Judge Philippe Kirsch, to conclude

the agreement on its behalf.

Since 19 November 2002, the relationship between the Court and the host State has been provisionally governed by the Agreement between the United Nations and the Netherlands concerning the Headquarters of the International Criminal Tribunal for the former Yugoslavia. These interim arrangements

continue to apply until the entry into force of the headquarters agreement, which is subject to approval by the Dutch Parliament.

Resolutions

The Assembly of States Parties appointed Mr Christian Wenaweser (Liechtenstein) to continue to chair the Special Working Group on the Crime of Aggression, Mr Jürg Lindenmann (Switzerland) to chair the Working Group on the Programme Budget for 2007, and Mr Masud Husain (Canada) to chair the Working Group on the Permanent Premises.

The Assembly also appointed the following focal points: Mr Jürg Lauber (Switzerland) on the strengthening of the International Criminal Court and the Assembly of States Parties, Mr Rolf Fife (Norway) on the review of the Rome Statute and Ms Michèle Dubrocard (France) on the strategic planning process of the Court.

Resumed fifth session of the Assembly of States Parties

The resumed fifth session of the Assembly in New York will focus primarily on the Special Working Group on the Crime of Aggression.

Resolutions adopted

Permanent Premises (ICC-ASP/5/Res.1)

The Assembly requested the Court to focus on purpose-built premises on the *Alexanderkaserne* site, without prejudice to the prerogative of the Assembly to make a final decision on where to permanently house the Court. Furthermore, the Assembly also requested the Bureau of the Assembly and the host State to proceed with the necessary preparatory work.

Strategic planning process of the Court (ICC-ASP/5/Res.2)

The Assembly recommended the Court to continue its dialogue with the Bureau of the Assembly and to focus on the concrete implementation of the Strategic Plan of the Court, including the location of the activities of the Court, the position of victims, the outreach and communication activities of the Court, and the relationship between the Strategic Plan and the budget.

Strengthening the International Criminal Court and the Assembly of States Parties (ICC-ASP/5/Res.3)

This resolution includes, *inter alia*, provisions on State co-operation and the expanding co-operation between the Court and the United Nations system, as evidenced by the

hosting of a trial by the Special Court for Sierra Leone and by the final leave of absence of the Deputy Prosecutor for Investigations to serve at the International Independent Investigation Commission of the United Nations. In addition, the resolution deals with the outreach activities of the Court, the arrears of States Parties and a Plan of Action for achieving universality and full implementation of the Rome Statute. As regards the Review Conference referred to in article 123 of the Rome Statute, the Assembly requests the Bureau to start preparations for the conference and to address practical and organisational issues, especially as regards the dates and venue.

Programme budget for 2007 (ICC-ASP/5/Res.4)

The Assembly approved the programme budget for 2007 of €88,871,800 and a staffing level of 647. It also decided that the Court shall adopt the scale of assessments for the apportionment of expenses of the United Nations applicable for 2007, with membership adjustments applicable to the Court. In connection with this, the Assembly decided that any maximum assessment rate for the largest contributor applicable for the United Nations budget would also apply to the Court's scale of assessments.

2007 budget approved by the ASP



ASP delegates attending the fifth session / ICC-ASP

The International Criminal Court's proposed budget for 2007 was discussed during the fifth session of the Assembly of State Parties (ASP). In order to facilitate and structure the discussions around the Court's 2007 budgetary submission, the Working Group on the Programme Budget was established. The Working Group held seven meetings from 24 to 29 November in preparation for the Assembly's fifth session. They produced a report assessing *inter alia* the proposed budget programme and the reports of the Committee on Budget Finance that was later endorsed by the Assembly.

With respect to the budget, the report indicated the Working Group's general satisfaction with the amount of details contained in the Court's draft budget programme and acknowledged the improvement made in its presentation. The 2007 budget submission continued the budgetary logic employed in the 2006 budget, but advanced the process further by incorporating the Court's strategic objectives as indicated in the ICC Strategic Plan. Additionally, each major programme

has identified the strategic goals to which it will contribute.

The new budgetary approach was summarised as a commitment to request funds 'only where funds are clearly needed.' Therefore the Court has not budgeted for any additional trials in 2007 since there have been no arrests other than Mr Lubanga Dyilo's. The ICC intends to finance any additional trial or any other unforeseen expenditure, such as forensic assistance, from the contingency fund, established by the ASP in 2004, to ensure continuity in the Court's operation should any unplanned event occur. Currently, the fund has not been used. With a view to further enhancing the accessibility of the budget process, the Court specified the estimated budget it would require for a second trial in Annex IX of the budget report.

As regards the resources required by the ICC in order to carry out its judicial activities efficiently, the Court budgeted for a total of €88.87 million, representing an increase of €8.45 on the 2006 budget. €1.01 is attributable to new resources. A large part

of the budget growth (€9.2 million) is the result of the 'induced costs', that is, costs incurred, but not initiated, by the Court. The net growth was directly associated with the work of the Court on the ground and the implementation of its Detailed Strategic Plan for Outreach. It should be noted that the Court's field operations have become the linchpin of the ICC's work and the need to continue supporting their effective operation has become an integral part of the Court's yearly budget. After a thorough review the Assembly of States Parties approved the programme budget for 2007.

Other matters dealt with by the Working Group included the reports of the external and internal auditors, interim premises and security arrangements, appointment of the External Auditor and the relationship with the Special Court for Sierra Leone.

In general the discussions undertaken were constructive and fruitful as was the overall spirit governing the debates throughout the fifth session of the Assembly of States Parties. The Court will continue to build upon this positive feedback in relation to its future work.

First ICC confirmation of charges hearing concludes *The Prosecutor v Mr Thomas Lubanga Dyilo*

As scheduled, the confirmation of charges hearing before trial in the case of *The Prosecutor v. Mr Thomas Lubanga Dyilo* took place in The Hague from 9 November until 28 November. It was conducted by the Pre-trial Chamber I (PTC I) of the ICC which is constituted of Judge Claude Jorda (France), Judge Akua Kuenyehia (Ghana), and Judge Sylvia Steiner (Brazil).

During this public hearing, all participants to the proceedings had the chance to be heard: the Prosecutor, the Defence and, for the first time in the history of international criminal law, the representatives of the victims. On a few occasions the PTC I ordered a closed session in order to ensure the confidentiality and security of the witnesses and victims involved. The legal representatives of the four recognised victims in this case were given the opportunity to present their observations in their opening and closing statements, as well as to assist in the sessions throughout the hearing.

Following the PTC I oral decision on 10 November 2006 rejecting the Defence's motion to postpone the confirmation of charges hearing, the Office of the Prosecutor (OTP) presented its own evidence, submitting background information on Mr Thomas Lubanga Dyilo; evidence about the existence of an armed conflict in Ituri in the DRC; and information on the *Union des patriotes*

congolais (UPC) and the *Forces patriotiques pour la libération du Congo* (FPLC), including their policies and practices in relation to the recruitment of children aged 15 years or less. The OTP pursued their arguments by presenting evidence on the alleged role of Mr Lubanga Dyilo and his individual responsibility. A day was given to examine the witness, a children's human rights worker for the United Nations in the Congo (MONUC) for 2003 and 2004.

During the second week of the hearing, the Counsel for the Defence started its case presentation by cross-examining the witness, lasting two days. The Defence presented its submissions regarding namely the burden of proof to be met by the OTP, on the admissibility and the probative value of the evidence previously submitted by the Prosecution. The Defence was also given the opportunity to present its exculpatory evidence on the above points which were discussed by the OTP during the previous week, and to which the OTP was given the chance to respond.

The last day was given over to the closing statements of both parties. The three legal representatives of the four recognised victims by the PTC I were also allocated a total of one-and-a-half hours to present their observations, thus ensuring the process of

equal representation for all participants had been met. Mrs Carine Bapita Buyangandu submitted her observations regarding victim a/105/06 and expressed her wish on behalf of her client for PTC I to confirm the charges held against Mr Lubanga Dyilo. Mr Franck Mulanda, followed by Mr Luc Walley, also expressed their points of view on behalf of victims a/0001/06, a/0002/06 and a/0003/06, requesting PTC I to confirm the charges.

In accordance with Regulation 53 of the Regulations of the Court, PTC I will have to render its final written decision before 29 January 2007. The judges will decide whether or not to confirm the charges brought by the Prosecutor against Mr Thomas Lubanga Dyilo and commit him to trial.

Mr Lubanga Dyilo at his desktop during the hearing / ANP



ICC publicises the hearings

As part of the Outreach and Public Information Programme, the Court undertook a number of efforts during the confirmation of charges hearing to ensure its commitment to transparency, understanding and accessibility particularly to those in the affected region.

A special edition of the ICC Newsletter on the Lubanga Dyilo case (No. 10) was published in English, French and Swahili. Twelve hundred copies were sent to local NGOs in Ituri and Kinshasa, in the Democratic Republic of the Congo (DRC), along with 1000 copies of the Court publication Understanding the ICC in French. Three-hundred Newsletters and 1000 fact sheets in English were also distributed to parliamentarians, diplomatic corps, governmental organisations and local media in Kampala, Uganda.

To ensure a better understanding of the Court proceedings, a few pages of general

information on the Court in an accessible question and answer format as well as the Newsletter, were published in the following Congolese newspapers: *Le Potentiel*, *L'Avenir*, *L'Observateur*, *La Référence Plus*, *La Tempête des Tropiques*, *Le Phare*, and *Uhuru* on 6 and 9 November. It is estimated that with a circulation of 1,800 each, the Court was able to reach 12,600 people, each time. A group of Congolese journalists followed the confirmation hearing from The Hague. Amongst those who came were *Le Potentiel* (newspaper), *Centre Lokole* (an association of 150 community radio stations), *Candip Radio* (from Bunia) and *RTNC* (DRC national television). These reporters filed daily news stories on the courtroom proceedings via the telephone and internet to their respective media organisations. In a special effort to explain the complexity of the judicial process, twenty-two interviews were given to the Congolese media,

principally with the Registrar, Bruno Cathala, the Deputy Prosecutor Fatou Bensouda and Public Information Officers.

During the key sessions for the hearing courtroom activity was broadcast through Eurovision. Re-transmission was available throughout Europe and Africa which meant that the two major TV stations in the DRC were able to air footage of the events in The Hague.

All hearings were also broadcast through the ICC website using video-streaming with a 30 minute delay. The website received 140 272 visitors in November representing an increase of 12.38% compared to October 2006. It is estimated that 757 807 pages were viewed in November representing an increase of 15.81% compared to October. The first day of the hearing, 9 November was the peak day for website activity as visitors logged on to access the proceedings.

Trust Fund for Victims holds third annual meeting

The Board of Directors of the Trust Fund for Victims of the International Criminal Court held its Third Annual Meeting on 6 and 7 November at the premises of the Court. All the four members of the Board, namely, Mme Minister Simone Veil, Chair of the Board; Mr Tadeusz Mazowiecki; Archbishop Desmond Tutu and Mr Arthur N R Robinson participated in the meeting.

In a busy agenda, the members of the Board discussed issues related to the implementation, role and structure of the Secretariat of the Fund, as well as the planning of Fund activities for the next year. The members were briefed on the needs of existing humanitarian assistance provided to the victims in the different situations under investigation by the Court, and assessed the potential role of the Fund to act for the benefit of the victims under the jurisdiction of the Court and their families.

In a communiqué www.icc-cpi.int/press/pressreleases/200.html adopted after the meeting, the members expressed their deep concern at the suffering endured by the victims, especially those in the Democratic Republic of the Congo, Uganda, the Central African Republic and Darfur. It was decided that in 2007, the Board would implement an active policy of assistance for specific vulnerable groups of victims in the countries in which the Court is active.



Left to right: Mr Arthur N R Robinson, Mr Tadeusz Mazowiecki, Mme Minister Simone Veil and Archbishop Desmond Tutu / ICC-CPI

Also during the III Annual Meeting, the Board welcomed the recruitment of the Executive Director of the Secretariat of the Trust Fund for Victims and commented that when he takes up his position this will mark the beginning of the operational phase of the work of the Secretariat.

The Chair of the Board of Directors, Mme Simone Veil participated in the opening session of the Fifth Assembly of States

Parties. In her speech, Mme Veil expressed her sincere gratitude to donor States, non-governmental organisations and individuals that have contributed to the Trust Fund bringing the amount contributed to almost two million euros. In her opinion, these contributions reflect the hope that the creation of the Fund for Victims represents, as well as the values that it embodies. Mme Veil also appealed to States to make regular contributions to the Fund.

President Philippe Kirsch visits Japan

President Philippe Kirsch visited Tokyo from 2 until 9 December on the invitation of the Japanese Ministry of Foreign Affairs.

Japan is currently considering its accession to the Rome Statute and President Kirsch was invited to provide information and respond to questions regarding the Court's role, procedure and activities. He held discussions with senior representatives of the Ministry of Foreign Affairs and Ministry of Justice, a Judge of the Japanese Supreme Court, parliamentarians, international law students and representatives of Japanese and foreign media.

President Kirsch also spoke before the 28th Annual Parliamentary Forum on Human Security and the Fourth Consultative Assembly of Parliamentarians on the International Criminal Court and the Rule of Law, organised by Parliamentarians for Global Action.



The Senior Vice-Minister for Foreign Affairs, Mr Takeshi Iwaya, welcomes ICC President Philippe Kirsch / ICC-CPI

President of the Republic of Bolivia visits the ICC



The Bolivian President, Mr Morales speaking to the Prosecutor Mr Moreno-Ocampo and President Kirsch / ICC-CPI

The President of the Republic of Bolivia, Mr Evo Morales Ayma, visited the International Criminal Court on 27 November as part of his trip to the Netherlands. President Morales and his delegation met with the ICC President, Judge Philippe Kirsch, the 2nd

Vice-President Judge René Blattmann, and the Prosecutor Mr Luis Moreno-Ocampo.

During the meeting between the Bolivian delegation and the ICC representatives, President Kirsch thanked President Morales

for Bolivia's continued support for the International Criminal Court. President Kirsch provided an overview of the Court's current activities and emphasised that the co-operation of States Parties and others was essential to its success.

The Chief Prosecutor, Mr Luis Moreno-Ocampo explained the mandate of the Office of the Prosecutor and clarified the requirements for jurisdiction of the Court and complementarity, emphasising that an intervention by the Office would only proceed if states are unwilling or unable to genuinely carry out judicial proceedings.

President Morales thanked his hosts for receiving him and the delegations then discussed the role of the ICC and international justice more broadly.

The Republic of Bolivia signed the Rome Statute in July 1998 and has been a ratified member of the Assembly of States Parties since June 2002.

Court briefing in the seat of the African Union

Registry Senior Legal Advisor, Mr Phakiso Mochochoko, recently undertook a trip to Addis Ababa, the seat of the African Union (13-17 November). Whilst there Mr Mochochoko met with African Ambassadors from Botswana, Gambia, Lesotho, Malawi and Zambia and other representatives of Nigeria, South Africa, Liberia, Uganda and Senegal to discuss and prepare for a diplomatic briefing planned for February 2007. The President of the Court, Judge Kirsch, the Prosecutor, Mr Moreno-Ocampo

and the Registrar, Mr Bruno Cathala will attend the briefing, the objective of which is to enhance the relationship between the Court and its African interlocutors. The International Criminal Court currently has 104 States Parties members, of which 29 are African, representing the largest regional block. The briefing will provide an update on the activities and challenges of the Court, as well as providing a forum for the discussion of a number of issues including peace, justice and reconciliation.

The Registrar visits New York

On 31 October until 3 November 2006, the Registrar of the International Criminal Court, Mr Bruno Cathala met with representatives of the States Parties in New York. Amongst the issues under discussion were the draft budget programme for 2007, the ICC Strategic Plan, and the Detailed Strategic Plan for Outreach with a view to providing the necessary information in preparation for the Assembly of States Parties held in The Hague on 23 November until 1 December 2006. Mr Cathala also met with representatives of civil society and human rights groups

and discussed the on-going status of the Court's activities at a time when its work under investigation has continued to expand. Additionally, the Registrar joined representatives of the African Group and exchanged views on co-operation and other issues relevant to the Court's work. In advance of the confirmation of charges hearing scheduled for 9 November 2006, the Registrar was interviewed by UN radio in which he explained the legal aspects surrounding the hearing in the ICC's first pre-trial case *The Prosecutor v. Thomas Lubanga Dyilo*.

COJOUR and the ICC meet in The Hague

The International Criminal Court Sub-area of the Public International Law Working Group (COJUR) of the European Union (EU) met in The Hague on 9-10 November.

The meeting is part of the regular informal dialogue between the Court and the members of the COJOUR who represent the 25 EU Member States. The ICC Registrar, Mr Bruno Cathala, together with representatives of the Presidency and the Office of the Prosecutor, held discussions with the members of the Working Group on several matters which were high on the agenda of the fifth session of the Assembly of States Parties, namely the 2007 proposed programme budget, the Strategic Plan including the Court Capacity Model and the Detailed Strategic Plan for Outreach, and the interim and permanent premises.

The Prosecutor also briefed the members of developments in his investigations and prosecutions.

Strategic Plan Workshops for the Registry

In the two weeks from 16 until 27 November a series of fifteen half day workshops was held at the Court and attended by over three-hundred members of the ICC Registry staff. The purpose of the workshops was to hold a strategic conversation about the Registry's input to the ICC's strategic plan. Members of the OTP staff and the Presidency were invited to represent the other organs of the Court at each workshop.

The basic design of the three hour workshop was a highly interactive exchange of information, views and ideas amongst all participants. The Registrar, who attended every session, was invited to provide the context and genesis of the Court's strategic plan and to spell out the Registry's specific contribution to the delivery of the Court's three interconnected strategic goals:

- to deliver a fair, effective and expeditious quality of international criminal justice
- to become a well-recognised and adequately supported institution
- to create a model of flexible, efficient and accountable public administration

In doing so, the Registrar touched on the philosophy, the ethics, the values and the shared judicial principles that jointly motivate and unites the President, the Prosecutor and himself in the interpretation and implementation of the Rome Statute.



Registry participants attending one of the workshops / ICC-CPI

He provided a complete range of everyday examples of these principles in action right across the Court's different sections and functions. The Registrar recognised the frustrations and important obstacles characteristic of the development of a young and dynamic organisation. In addition, he defined the workshop process as a personal opportunity to listen carefully and hear all the concerns, experiences and aspirations expressed directly by the three-hundred-plus participating members of staff. All participants were asked to respond to three questions put to each group in turn by the external facilitator.

- What excites you about working for the Court?
- What are the major obstacles that prevent you from working the way you want to?
- Which of the Court's top twenty strategic objectives are you most strongly attached to?

The Registrar said that he was grateful for the open and frank participation of the staff and that it was a pleasure for him to have seen the diversity of talent and experience available to the organisation.

James Gardener, independent consultant, facilitator of the workshops.

The ICC plans new premises

At present the Court's headquarters are situated in The Hague, with the ARC as its main building. The ARC has been provided by the host state as interim facilities until 2012. Therefore the Court together with the different stakeholders has been actively looking into the matter of permanent premises for the past few years.

Early in 2005 the Court submitted a report to the Committee on Budget and Finance (CBF) providing an overview of the main requirements the permanent premises would need to fulfil in view of the Court as its user. The main requirements specified the premises should reflect the character of the Court; that there should only ever be one site; that all organs should be on one site and that the form of the building should be defined by its function. Other aspects such as user-friendliness, adaptability,

security and the need for facilities for victims, witnesses and defence were also highlighted. Related to the size of the building, the Court identified flexibility and scale to be of utmost importance due to the early stage of the Court's evolution.

The CBF and the States Parties have both stressed the importance of progression on the issue of permanent premises. It is therefore now upon the Court to define its requirements in more detail, achieved through the implementation of a functional brief, focusing on details such as staff space requirements, proximity relations, functional relations, main security issues, co-operational aspects between the different sections of the court, etc. The functional brief will also allow for first cost estimates for the new construction as well as serving as the basis for an architectural competition.

Work on this brief has begun. Currently, staff are being interviewed with regard to user requirements in all the different functions of the Court.



Interviews with the various functional units are analysed / ICC-CPI



Latest Public Legal Filings

For an update of all public legal filings relating to situations and cases before the Court, please consult the ICC website at:

www.icc-cpi.int/cases.html.