



*Address to the United Nations General Assembly*

*29 October 2009*

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

Mr. President,

I am very honoured today to address the United Nations General Assembly on behalf of the International Criminal Court.

This is my first opportunity to address the General Assembly since my election in March to succeed Judge Philippe Kirsch as President of the Court. Judge Kirsch deserves great credit for his leadership not only in the establishment and early development of the Court, but also in the development of the relationship between the Court and the United Nations. I fully share his commitment to a strong and close relationship between the Court and the United Nations. I look forward to further developing our mutually beneficial cooperation and support over the three years of my mandate as President of the Court.

In my remarks today, I would like:

- first, to update you on the activities of the Court, and,
- second, to speak about the priorities for my presidency, focusing in particular on how they relate to the United Nations.

*I. Update on Activities*

Mr. President,

On the 26<sup>th</sup> of January this year, Trial Chamber I began the Court's first trial, that of Mr. Thomas Lubanga Dyilo. He is charged with conscripting, enlisting and using children under 15 to participate actively in hostilities in the Democratic Republic of the Congo. The trial is ongoing.

Next month, Trial Chamber II should commence the second trial of the Court. Mr. Mathieu Ngudjolo Chui and Mr. Germain Katanga are each charged with seven counts of war crimes and three counts of crimes against humanity in the Democratic Republic of the Congo.

In the situation in the Central African Republic, Pre-Trial Chamber II recently confirmed three charges of war crimes and two charges of crimes against humanity against Mr. Jean-Pierre Bemba. Trial Chamber III is currently preparing for this trial, including ensuring the disclosure of evidence to the accused and the protection of witnesses.

Last week, Pre-Trial I commenced a hearing on the confirmation of charges against Mr. Abu Garda. He is charged with three counts of war crimes related to an attack on African Union peacekeepers.

The Court is only half-way through its first trial. It is still too early to draw definitive conclusions about judicial proceedings. Permit me, however, to make three general observations.

First, the extent of attention which must be given to the protection of witnesses is perhaps unprecedented for any court or tribunal. Of the 30 witnesses called so far in the Lubanga

case, 22 testified in Court with some form of protective measures. In comparison, only 28% of witnesses at the International Criminal Tribunal for the Former Yugoslavia have required any protective measures. The in-court protective measures are only one aspect of the measures to safeguard victims and witnesses. Much more goes on behind the scenes to ensure that victims and witnesses are not put at risk while also guaranteeing the rights of the accused to a fair, public trial.

Second, the Court is operating against a largely blank slate of jurisprudence. The Pre-Trial and Trial Chambers are routinely confronted with fundamental questions of interpretation of the Rome Statute, some of which concern completely new innovations in international law. In the past year, there were two inquiries into the admissibility of cases on the basis of the principle of complementarity – one in the case of Mr. Katanga and another in the situation in Uganda. The issues raised in these instances have been resolved ultimately by the Appeals Chamber.

Third, the Court has dealt ably with what many foresaw as a potentially significant practical challenge, namely the participation of victims. 102 victims have participated in the proceedings against Mr. Lubanga. 345 victims will participate, through two legal representatives, in the trial of Mr. Katanga and Mr. Ngudjolo Chui.

Mr. President,

The biggest obstacle to the conduct of judicial proceedings remains the lack of arrest and surrender of suspects.

Warrants have been outstanding since 2005 for Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen for war crimes and crimes against humanity allegedly committed in Uganda. Bosco Ntaganda has been sought since 2006 for war crimes allegedly committed in the Democratic Republic of the Congo. Ahmad Harun and Ali Kushayb are each subject to warrants for crimes against humanity and war crimes issued in 2007 in relation to the situation in Darfur, Sudan.

On 4 March 2009, Pre-Trial Chamber I issued a warrant of arrest for Mr. Omar al-Bashir, the President of Sudan. The Chamber found there were reasonable grounds to believe that he had committed five counts of crimes against humanity and two counts of war crimes in Darfur. As with all previous warrants, requests for his arrest and surrender were issued to States. It is the responsibility of States to arrest and surrender these persons in accordance with their legal obligations.

Beyond these judicial proceedings, the Prosecutor is continuing his investigations into the four situations before the Court. He is also pro-actively gathering and analyzing information on crimes which may have been committed within the jurisdiction of the Court in other situations. The Prosecutor has publicly stated that he is looking into situations concerning Colombia, Georgia, Afghanistan, Côte d'Ivoire, Kenya, Palestine and Guinea

## *II. Priorities*

Mr. President,

I would like to turn now to the priorities of my presidency as they pertain to the United Nations. My three priorities for the Court are:

- - first, to ensure respect for the judicial independence of the Court,
- - second, to enhance the effectiveness of the Rome Statute system, and
- - third, to continue to strive to be a model of public administration.

Today, I will speak about the first two priorities.

Mr. President,

The hallmark of the Court is its independent, judicial nature. The drafters of the Rome Statute took great care to exclude political considerations from the work of the judges. Once a situation comes before the Court, justice follows its course. The judges cannot and will not take political considerations into account. They make judicial judgments on judicial facts. Those who wish to discuss political issues will need to do so in political fora. Those who wish to engage the judges should do so through judicial proceedings.

At the same time, this judicial institution operates within a political world. It depends on States and others not just for cooperation, but also to respect, to protect and to enhance its judicial independence. When the Court issues a decision, it must be enforced by States in accordance with their legal obligations. If a request of the Court creates problems for a State, it should nevertheless respect the decision and consult with the Court in accordance with

the Rome Statute. Where misperceptions may continue to exist, States, international organizations and civil society should continue to promote awareness and understanding of the Court's purely judicial nature.

Mr. President,

The second priority of my presidency is to enhance the effectiveness of the Rome Statute system. States, international organizations and civil society have been working for years to develop the system of international criminal justice. Their achievements have been remarkable, but it is not time to rest on one's laurels. This system can and should be further developed. The primary responsibility to do so belongs to States, but the Court has a natural, leading role to play. This system of international criminal justice can be enhanced in three ways.

First, the system can be broadened through advancing global ratification of the Rome Statute. Ratification of the Rome Statute is a sovereign decision of States. The Court will not seek to persuade States in their decisions, but it will provide as much information as possible to those considering ratification.

Second, the system can be deepened through improving the ability and willingness of national jurisdictions to investigate and prosecute crimes within the jurisdiction of the Court, namely genocide, crimes against humanity and war crimes. The Court will, subject to the limitations of its resources and its Statute, explore ways to assist States seeking to develop their capacities to investigate and prosecute international crimes.

Third, the system can be strengthened through improving cooperation, in particular the enforcement by States of decisions and orders of the Court. Cooperation is a matter of legal obligations which must be fulfilled. The Court will nevertheless work with States to identify means and methods of enhancing the speed and reliability of cooperation.

The United Nations has an equally central role in enhancing the system of international criminal justice. While the first article of the Rome Statute establishes the Court, the second requires it be brought into relationship with the United Nations. Further development of the system of international criminal justice and its further integration with the United Nations system is in our common interests. The Court greatly appreciates the statements of the Secretary-General, the resolutions of the General Assembly and other bodies, and all of the practical efforts undertaken by the United Nations in support of international criminal justice.

The Court looks forward to continuing to work with the United Nations and with States, other international organizations and civil society to explore new means and methods for further enhancing the system of international criminal justice. In this regard, the stocktaking exercise to be part of the Review Conference convened by the United Nations Secretary-General in Kampala next year provides an excellent opportunity not only to assess where the system stands but also to set a roadmap for the future.

### *III. Conclusion*

Mr. President,

In fifteen years, the International Criminal Court has gone from an idea on the agenda of the General Assembly's Sixth Committee and the International Law Commission to a robust judicial institution whose activities permeate the entire United Nations system. The futures of our two institutions have become very much intertwined. You have my commitment and that of the Court of our continued contributions to the aims of the Rome Statute and the Purposes and Principles of the United Nations through our faithful adherence to the Court's independent and judicial mandate.

Thank you.