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The Office of the Prosecutor

Report

on the activities performed during the first three years (June 2003 – June 2006)

12 September 2006

The Hague

Highlights of the Report

The Office faced many challenges during the last three years.

The **first challenge** was related to how to begin its cases.

In selecting its cases, the Office is guided by the standard of *gravity* as mandated by the Rome Statute. The situations in the Democratic Republic of the Congo ("DRC") and Northern Uganda were the gravest admissible situations under the jurisdiction of the Court, and the situation in Darfur, the Sudan, also clearly met the gravity standard. The Office understands concerns about a geographic focus, but regional balance is not a criterion for situation selection under the Statute.

With regard to triggering cases, while the *proprio motu* power is a critical aspect of the Office's independence, the Prosecutor adopted a policy of inviting voluntary referrals from states to increase the likelihood of important cooperation and support on the ground.

The **second challenge** faced by the Office was how to conduct investigations into situations of on-going violence. Two critical measures to meet the challenges presented by these exceptional logistical difficulties were to reduce the length and scope of the investigation. In the LRA case the arrest warrants were requested after 10 months of investigation and in the Thomas Lubanga Dyilo case the arrest warrant was requested after 18 months.

The **third challenge** for the entire Court is how to execute arrest warrants. The Court was able to address this challenge in the Thomas Lubanga Dyilo case because he was already in custody, but the challenge is expected to remain a critical one. The Office would appreciate hearing the States Parties' plans in this regard.

Investigations

The case against Thomas Lubanga Dyilo is the first in the DRC situation. His confirmation hearing is scheduled for 28 September 2006. The Office alleges that Thomas Lubanga Dyilo committed the crimes of enlisting and conscripting children under the age of 15 years as well as using them to participate actively in hostilities. The decision to focus on this crime was triggered by the possible

imminent release of Thomas Lubanga Dyilo, who had been under arrest in the DRC since March 2005, as well as the evidence collected.

On 8 July 2005 Pre-Trial Chamber II issued the warrants of arrest against Joseph Kony and four LRA leaders. They allegedly committed crimes against humanity, including enslavement, rape and murder, and war crimes, including intentionally directing an attack against the civilian population, enlisting children and inducing pillaging.

On 31 March 2005, under Resolution 1593, the Security Council referred the situation in Darfur, the Sudan to the Prosecutor, affirming that justice and accountability are critical to achieving lasting peace and security in Darfur. Because of security conditions, the Office has investigated alleged crimes in Darfur without going to Darfur. The Office has conducted more than 50 missions to 15 countries (including three to the Sudan), screened close to 500 potential witnesses, taken formal witness statements, and collected and reviewed more than 9,700 documents. The Office aims to deliver justice to the victims of the crimes in Darfur, either through respecting genuine efforts at a national level or through a case before ICC judges.

Issues that arose during the Investigations

Victims and Witnesses. The Office, in collaboration with the Victims and Witnesses Unit of the Registry and with the assistance of national authorities and local actors, established the Court's first witness protection system. The establishment of this system was a prerequisite for conducting interviews with witnesses.

Interplay between ICC Investigations and Conflict Resolution Initiatives. The Office policy is to maintain its own independence and pursue its mandate to investigate and prosecute, and do so in a manner that respects the mandates of other actors. In an effort to address concerns expressed by local leaders and demonstrate respect for on-going peace talks, the Office maintained a low public profile during the investigation in Northern Uganda. At no time, however, did the Office stop its investigation.

Proceedings and Litigation

In addition to requests for the issuance and transmission of arrest warrants, the Office continues to raise foundational issues with the Pre-Trial Chamber and

Appeals Chamber, including: different forms of victim participation in the investigation phase; the respective responsibilities of the Office, the Pre-Trial Chamber and the Appeals Chamber; and matters such as fair trial rights of the accused.

Policies and Protocols

The Office spent its first three years developing and shaping its policies and regulations. The advance team had produced a draft Policy Paper and draft Regulations. They were widely discussed during the first public hearings. In addition the Office has formulated different policy papers and over 130 draft protocols and standard operating procedures related to specific aspects of its work.

Management and Organisation

The Office has confirmed an interdisciplinary structure bridging the strengths of different expertises. To address the tension between independence and a common administration, the Office has worked with the other organs of the Court to establish a division of tasks that will contribute to cohesive operations while enabling the Prosecutor to maintain and pursue an independent strategy and the Registry to preserve its neutrality. The Court has consolidated its administrative functions and the Office relies primarily on the Registry's capacity as a service provider. The achievements of the Office would not have been possible without the services provided by the Registry through this structure.

In selecting its staff, the Office seeks the highest standards of efficiency, competency and integrity, in accordance with article 44(2) of the Statute, while respecting geographic and gender balance. The growth of the Office was exponential: five-fold the first year, more than double the second and still increasing by 25% in the third year. In June 2006, there were 81 professionals including the Chief Prosecutor, and 43 support staff.

22 staff members out of the 146 hired by the Office prior to June 2006 have left the organisation . Commonly articulated reasons for leaving include acceptance of other prestigious employment offers in their home jurisdictions and impending expiration of leaves of absence from home offices. The Office is currently identifying the appropriate attrition rate for its staff.

The Office has had a total of 161 interns and 12 visiting professionals, representing 55 different nationalities. Many interns have applied for full-time positions, however, only 4 (less than 3%) attained a permanent post.

Relationship with External Actors

The lack of a state apparatus forces the Court to rely on cooperation from institutions which cannot receive instructions from the Court.

The Office has sought -- and continues to seek -- to establish arrangements with various actors to provide practical and logistical support such as assistance with the investigation, transportation, security for witnesses and investigators, as well as cooperation in securing arrests.

Transitioning to the next phase of the Court

The Court is becoming a more complex and multifaceted organisation. Until several trials begin in earnest and have been concluded, it will be too early to truly measure the impact of the Office. Instead, this report provides a comprehensive resource by which to follow what the Office has accomplished thus far.

Report on the activities performed during the first three years (June 2003 – June 2006)

Introduction

This report will detail activities performed during the first three years of the Office of the Prosecutor ("Office") of the International Criminal Court ("ICC"), the challenges faced and the rationale upon which the decisions and strategies of the Office were based. It will describe how the Office initiated its investigations, collected evidence, requested arrest warrants, secured the arrest of a major suspect, developed its policies and procedures, structured its organisation and collaborated with the other organs of the Court and external actors.

Part 1: Investigations and Prosecutions

a. Challenges faced by the Office

1) In its first three years, the Office had to learn to address three major challenges in relation to its core activities of investigating and prosecuting crimes under its jurisdiction.

2) The **first challenge** faced by the Office related to how to begin its cases. This led to two distinct issues: first, how to select situations to investigate, and second, by what method to trigger the jurisdiction of the Court.

a) With regard to the selection of situations, once the requirements of temporal and subject-matter jurisdiction are met, the Office is guided by the standard of gravity. Although any crime falling within the jurisdiction of the Court is a serious matter, the Rome Statute (articles 53(1)(b), 53(2)(b) and 17(1)(d)) clearly foresees and requires an additional consideration of "gravity" whereby the Office must determine that a case is of sufficient gravity to justify further action by the Court. In the view of the Office, factors relevant in assessing gravity include: the scale of the crimes; the nature of the crimes; the manner of commission of the crimes; and the impact of the crimes.[1] After thorough analysis, the Office concluded that the situations in the Democratic Republic of the Congo ("DRC") and Northern Uganda were the

[1] Draft Policy Paper on Selection Criteria.

gravest admissible situations under the jurisdiction of the Court. The situation in Darfur, the Sudan, referred to the Prosecutor by the Security Council, also clearly met the gravity standard. The situations selected contributed to a problematic perception as to the existence of an intentional geographically-based prosecution strategy. The Office understands this concern, but regional balance is not a criterion for situation selection under the Statute.

b) While *propio motu* power is a critical aspect of the Office's independence, the Prosecutor adopted the policy of inviting and welcoming voluntary referrals by territorial states as a first step in triggering the jurisdiction of the Court. This policy resulted in referrals for what would become the Court's first two situations: Northern Uganda and the DRC. The method of initiating investigations by voluntary referral has increased the likelihood of important cooperation and on-the-ground support.

3) The **second challenge** faced by the Office was how to conduct investigations into situations of on-going violence, where even travelling to the areas in question may be impossible, or where the territory suffers from a collapse of functioning institutions. The Office had to learn how to: approach the possible witnesses without exposing them; identify safe sites for interviews; secure discreet transportation for investigators and witnesses; provide for the contingency of moving witnesses to safe locations without attracting attention; and even check the relationships of drivers and hotel owners with the suspects. In addition, the Office had to communicate effectively with witnesses in different languages, some of which have no corresponding words for the legal terminology required for the interview. In Northern Uganda there are four local languages, Acholi, Lango, Ateso and Kuman, and in Ituri district of the DRC there are three, Lendu, Linghala and local Swahili, while in Darfur there are four, Fur, Zaghawa, Massalit and local Arabic. Because there are few qualified professional translators, finding persons with the appropriate skills and background required exceptional efforts. Conditions on the ground for investigators are usually quite difficult, with poor facilities; in some cases 90% of the Office's investigators returned from their missions with illnesses.

Two critical measures to meet the challenges presented by these exceptional logistical difficulties were to reduce the length and scope of the investigation.

a) Based on the Statute, the Office adopted a policy of focusing its efforts on the *most serious* crimes and on those who bear the *greatest responsibility* for

these crimes. Determining which individuals bear the greatest responsibility for these crimes is done according to, and dependent on, the evidence that emerges in the course of an investigation. When the Court does not deal with a particular person, it does not mean that impunity is thereby granted – the Court is complementary to national efforts, and national measures against other offenders should still be encouraged. The Office also adopted a "sequenced" approach to selection, whereby cases inside the situation are selected according to their gravity.

b) This challenge also requires the Office, whenever possible, to present expeditious and focused cases while aiming to represent the entire range of criminality. In principle, incidents will be selected to provide a sample that is reflective of the gravest incidents and the main types of victimization. In Northern Uganda, for example, the Office selected six incidents out of hundreds that occurred and charged the five top leaders of the LRA with crimes against humanity, including enslavement, sexual slavery, rape and murder, and war crimes, including intentionally directing an attack against the civilian population, enlisting children and inducing rape and pillaging. Sometimes there are conflicting interests which force the Office to focus on only one part of the criminality in a particular conflict. In the situation in the DRC, the Office initially investigated a wide range of crimes allegedly committed, seeking to represent the broad range of criminality. The Office subsequently decided in its first case to focus on the crime of enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities. The decision to focus on this crime was triggered by the possible imminent release of Thomas Lubanga Dyilo, who had been under arrest in the DRC for approximately one year before he was transferred to the Court. Therefore, after careful consideration of the evidence gathered, including linkage of the accused to the crime and in accordance with the requirement to prove charges beyond a reasonable doubt, the Office decided to limit the charges to those mentioned above.

The approach used in the selection of incidents and charges assists the Office in reducing the number of witnesses called to testify. This is one of the measures taken to address the security challenge. Additionally the Office, together with the Victims and Witnesses Unit and the Security Section, developed plans to adequately protect witnesses and ICC Staff, including immediate response systems. These response systems have already been used effectively in several instances where threats were reported.

4) The **third challenge** faced by the entire Court is how to execute arrest warrants. This is perhaps the most critical and difficult issue of the system created by the Rome Statute. As mentioned, the Court does not have its own enforcement force. Under the Statute, it is the States Parties that bear the responsibility for arresting suspects and delivering them to the Court for prosecution. Although territorial states have the mandate to control their territory, in the context of the situations where the Court operates, they often have difficulties executing arrest warrants. The Court was able to effectively address this challenge in the Thomas Lubanga Dyilo case because he was already in custody, but more assistance is needed to enforce the outstanding arrest warrants that have been issued in the LRA case. The Office anticipates that this will be a key challenge in the next phase of its operations and it is essential that States Parties inform the Office of their efforts in this regard.

b. Referrals, Communications, Analysis and Investigations

5) In the Office's first three years the Prosecutor received three referrals from States Parties – Uganda, the DRC and the Central African Republic ("CAR") - each referring situations in their own territories. The Prosecutor has also received a referral from the Security Council regarding the situation in Darfur, the Sudan.

6) In addition, through to the end of June 2006, the Office received 1918 communications from individuals or groups in at least 107 different countries. 63% of the communications originated in just three countries: Germany, USA and France. The communications include reports on alleged crimes in 153 countries in all regions of the world.

7) All communications are subjected to an initial review to determine whether they provide a possible basis for further action. During the initial review of the communications received, approximately 80% of communications were found to be manifestly outside the jurisdiction of the Court.

8) Of the approximately 20% of communications warranting further analysis, 10 situations have been subjected to intensive analysis. Of these, three proceeded to investigation (the DRC, Northern Uganda, and Darfur), two were dismissed (Venezuela and Iraq), and five analyses are on-going.

9) With regard to the situation in Venezuela, the information available did not provide a reasonable basis to believe that the alleged crimes fell within the

jurisdiction of the Court.[2] In the case of Iraq, where the Court has jurisdiction only with respect to actions of States Parties nationals, the information available supported a reasonable basis to believe that a limited number of instances of wilful killing and/or inhuman treatment had occurred. However, the alleged crimes committed by nationals of State Parties in Iraq did not appear to meet the required gravity threshold. Additionally, the Prosecutor noted that, although it was not necessary to reach a conclusion on complementarity in light of the conclusion on gravity, national proceedings had been initiated with respect to each of the relevant incidents.[3]

10) The five situations currently under analysis include the situation in the CAR, following the referral by the CAR Government, and the situation in Côte d'Ivoire which, through a declaration lodged with the Court, accepted the Court's jurisdiction for crimes committed in its territory since 19 September 2002. A mission to CAR has taken place and a mission to Côte d'Ivoire is planned in order to develop an analysis of the jurisdiction, admissibility and the interests of justice. Only those situations under analysis which have been made public by the senders of communications are made public by the Office.

11) The Office selected the DRC and Northern Uganda as the first situations because they were the gravest admissible situations under the Statute's jurisdiction, and, after the referral, the Office confirmed that the Darfur situation clearly met the gravity standard. The Office will continue to adhere to the rigorous standard of gravity established in the Statute.

(i) The DRC Investigation

12) In September 2003, at the second meeting of the Assembly of States Parties, the Prosecutor noted his willingness to seek authorization to use his *proprio motu* powers to initiate an investigation in the DRC if necessary. At the same time, he publicly welcomed the possibility of a referral from the DRC due to the likelihood of better cooperation.[4] On 3 March 2004 the President of the DRC referred the situation in that country to the Prosecutor. After the statutorily required analysis of jurisdiction,

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[2] http://www.icc-cpi.int/library/organs/otp/OTP_letter_to_senders_re_Venezuela_9_February_2006.pdf.

[3] http://www.icc-cpi.int/library/organs/otp/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf.

[4] Report of the Prosecutor of the ICC to the Second Assembly of States Parties, 8 September 2003, available at http://www.icc-cpi.int/library/organs/otp/LMO_20030908_En.pdf.

admissibility and the interests of justice, an investigation of the situation was opened on 21 June 2004.

13) The first step in the Office's analysis was to identify, respecting amongst other factors the temporal jurisdiction of the Court, which region of the DRC had experienced the gravest crimes. Upon assessing the entire DRC, the Office concluded that the gravest crimes had allegedly occurred in Ituri. Within the complex conflict in Ituri, in which many militias have committed crimes, the Office has focused its investigation on those militias allegedly responsible for the most serious crimes.

14) As established in its policies, the Office assembled a joint team to carry out this investigation, combining staff members from different disciplines and belonging to each of the Office's three Divisions. Members of the joint team for the DRC investigation have been deployed to Ituri since July 2004 and have conducted more than 70 missions inside and outside the DRC, interviewing almost 200 persons. In order to facilitate these missions, a Judicial Cooperation Agreement between the Office and the DRC was signed on 6 October 2004 and cooperation mechanisms were progressively established on the DRC territory with MONUC and other relevant organisations. Despite the significant challenges facing the DRC authorities, cooperation from the DRC has been positive. Joint field offices with the Registry were established in Kinshasa and Bunia.

Witness and Victim Protection

15) Throughout the DRC investigation and in the other situations currently under investigation, the Office's care for the safety and well-being of victims and witnesses (mandated by article 68 of the Statute) has been a high priority and a key consideration in its handling of witnesses and decisions as to what evidence will be used in order to prove specific elements of crimes. Each witness requires a careful approach, both before, during and after conducting the interview. The following activities are performed in each case:

a) Pre-Interview Measures:
   i) screening, selection of witnesses;
   ii) security assessment;
   iii) background preparation (e.g., geographic and community layout) to contextualize witness statements and screen witnesses;

iv) psychological assessment of victim-witnesses with special measures for victim-witnesses who were sexually assaulted and for child-witnesses to ensure that interviewee is in state of preparedness so as not to be traumatized by the interview process; and
v) providing witnesses with choice as to gender and age of interviewer.

b) Interview Measures:
   i) clear explanation of the goal of the interview;
   ii) awareness and adjustment for cultural and language differences;
   iii) presence of language interpreter services;
   iv) sensitive and careful interviewing; and
   v) possibility for transcription or taping for certain witnesses.

c) Post-Interview Measures:
   i) review of the exact statement;
   ii) continued tracking of witnesses to protect them;
   iii) supervise maintenance of the chain of custody of evidence; and
   iv) establish and implement protocols for disclosure to the defence.

In addition a witness protection mechanism was set up with the support of the DRC authorities, including immediate response systems.

16) After 18 months of intense investigation, on 12 January 2006, the Office submitted a sealed application for an arrest warrant against Thomas Lubanga Dyilo, a Congolese national and the alleged founder and leader of the Union des Patriotes Congolais ("UPC") and its military wing, the Forces Patriotiques pour la Libération du Congo ("FPLC"). The Office was charging Thomas Lubanga Dyilo with the crimes of enlisting and conscripting children under the age of 15 years as well as using them to participate actively in hostilities. The decision on the timing and the content of the charges was triggered by the possible imminent release of Thomas Lubanga Dyilo. He and leaders of other militias had been under arrest in the DRC since March 2005 in reaction to the killing of UN peacekeepers on 25 February 2005. Human Rights Watch criticized the DRC military proceedings, primarily due to the absence of charges against the defendants. In compliance with the law of the DRC, Thomas Lubanga Dyilo's detention had been renewed monthly by the competent military prosecutor. The DRC law requires that after twelve consecutive months of detention, in this case on 19 March 2006, a military judge confirm the detention. While the Office had no information as to the possible intentions of the competent military judge, there was no information available connecting Thomas Lubanga

Dyilo with this attack. It was therefore possible that the military judge could order his release. As a result, after careful consideration of the evidence gathered during the investigation, including linkage of the accused to the crime, the Office decided to file a request for an arrest warrant.

17) On 10 February 2006, Pre-Trial Chamber I issued a sealed warrant of arrest against Thomas Lubanga Dyilo. A request for arrest and surrender was subsequently transmitted to the DRC authorities.

18) On 17 March 2006 Thomas Lubanga Dyilo was surrendered to the Court as a result of the first arrest warrant ever executed for the Court. That same day, the arrest warrant was unsealed.

19) The transfer of custody of Thomas Lubanga Dyilo was an example of effective cooperation between the territorial state (the DRC), the Registry, Pre-Trial Chambers, States Parties, the Security Council and the Office. Specific details as to the cooperation involved are contained in Part 4 of this report.

20) According to the unsealed arrest warrant, as President of the UPC and Commander-in-Chief of the FPLC, Thomas Lubanga Dyilo allegedly had ultimate control over the UPC's and FPLC's adoption and implementation of policies and practices which included conscription and enlistment of children under the age of 15 into the FPLC and of using children under 15 to participate actively in hostilities.[5] With regard to additional charges, the Office has stated that it will defer investigation of other crimes until after his first trial.

21) The first appearance of Thomas Lubanga Dyilo took place on 20 March 2006 in the presence of his defence counsel, Mr. Jean Flamme, an attorney registered on the List of Counsel administered by the Court. Since that day, the Pre-Trial Chamber, defence counsel and the Office have been collaborating to enable the disclosure of more than 5,000 pages of information, including incriminatory and exculpatory evidence and other material (rule 77). Although much of this judicial activity is not well known due to its confidential nature, it requires significant amounts of work and cooperation between the Pre-Trial Chamber, the Victims and Witnesses Unit, Information Technology services, the Office's joint team for the UPC case and the defence counsel.

[5]http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-2_tEnglish.pdf
[6] http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-2_tEnglish.pdf

22) While the UPC investigation team continues preparation for trial, a second investigation team is pursuing crimes allegedly committed by another Ituri armed group. The Office will take a sequenced approach, as is its policy, and expects that Thomas Lubanga Dyilo's case will be the first case, not the last one, in the DRC situation. There are different possibilities for subsequent cases. In addition to the situation in Ituri the Office continues to assess the situation in the DRC's other provinces.

23) During its investigations the Office has offered limited technical assistance to the DRC judicial authorities in relation to certain criminal investigations. The Office is developing further cooperation strategies in order to prepare additional investigations. Such strategies might include a further division of labour with the DRC judiciary.

24) In the context of the DRC investigation, in April 2005, a unique investigative opportunity arose under the Statute whereby the Office had the opportunity to take testimonies and gather evidence that may not be available subsequently for use in a trial. For situations like these that arose during a phase in the proceedings during which there was not yet an individualized defence, the Statute sets forth a special procedure that ensures the efficiency and integrity of the proceedings and protects the rights of the future defendants. In this case, Pre-Trial Chamber I authorized the Office to request the carrying out of forensic examination and appointed an *ad hoc* counsel for the defence.

(ii) The Uganda Investigation

25) In December 2003 the Office received a referral from the Government of Uganda regarding the situation of the Lord's Resistance Army ("LRA"). The Office informed the Government of Uganda that, in compliance with its obligations of impartiality, the Office would interpret the referral to include all crimes committed in Northern Uganda. The Office then analysed the gravity of crimes allegedly committed by different groups in Northern Uganda and found that the crimes allegedly committed by the LRA were of higher gravity than alleged crimes committed by any other group. The Office therefore started with an investigation of the LRA and is currently analyzing crimes committed by other groups, taking into consideration the gravity threshold and complementarity.

26) The Uganda joint team was recruited in early 2004. The team included a total of 15 professional staff drawn from the three Divisions of the Office. The investigation

was opened on 28 July 2004. In just ten months, Office investigators conducted over 50 missions to the field and collected sufficient information to successfully apply for five warrants of arrest against the top LRA commanders.

27) On 6 May 2005 the Office submitted a sealed request for warrants of arrest for Joseph Kony and four senior leaders of the LRA, who were alleged to bear the greatest responsibility for the most serious crimes. In the request they were accused of having committed crimes against humanity, including enslavement, sexual slavery, rape and murder, and war crimes, including intentionally directing an attack against the civilian population, enlisting children and inducing rape and pillaging.

28) On 8 July 2005 Pre-Trial Chamber II issued the warrants of arrest and requests for arrest and surrender. The Pre-Trial Chamber kept the warrants under seal until 13 October 2005 out of concern for the safety of victims and witnesses.

29) According to the arrest warrants, Joseph Kony and the other accused LRA leaders allegedly gave orders to murder and abduct and sexually enslave civilians, and established a pattern of brutalization of civilians. The accused LRA leaders allegedly issued broad orders to target and kill civilian populations, including those living in camps for internally displaced persons ("IDP's"), and issued orders to loot those camps and to abduct the residents. The LRA leadership also allegedly ordered mass burnings of houses and looting of settlements in IDP camps. Additionally, under these orders, abducted civilians, including children, were allegedly forcibly "recruited" as fighters, porters and sex slaves to serve the LRA and to carry out attacks against the Ugandan army and civilian communities.[6]

30) One of the most important services established during the Northern Uganda investigation was the Court's first witness protection system. This system was created in collaboration with the Victims and Witnesses Unit of the Registry and with the assistance of national authorities and local actors. The establishment of this system was a prerequisite for conducting interviews with witnesses.

31) The efficiency of the Northern Uganda investigation was a consequence of the cooperation received from the people and the authorities of Uganda, as well as the Office's policy of focused investigations. The Office selected six incidents on the basis of evidence collected that were found to be representative of LRA crimes. A

[6] http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-53_English.pdf.

small team of investigators in short time was able to focus its efforts on collecting the information necessary to link the crimes under investigation to those most responsible. Selecting six incidents also reduced security risks by limiting the number of witnesses that needed to be contacted.

Interplay between ICC Investigations and Conflict Resolution Initiatives

32) The interplay between conflict resolution initiatives and justice has been most evident in the situation of Northern Uganda but the Office expects this issue to arise in most of the situations under investigation and thus to present an on-going challenge. As investigations will often take place within an on-going conflict, the Office will be investigating and prosecuting at the same time that other actors are working to address the conflict and restore civilian livelihoods. Broadly, these conflict resolution initiatives might include efforts to provide security, humanitarian relief and peace building, as well as justice. The mandate of the Office is to ensure accountability for those who bear the greatest responsibility, alongside national proceedings and other community initiatives. The Office recognises that, while each actor needs to pursue its respective initiative, efforts to build long-standing stability require harmonization of these efforts. However, in order to preserve its impartiality, the Office cannot be a component of these initiatives. The Office policy is to maintain its own independence and pursue its mandate to investigate and prosecute, and do so in a manner that respects the mandates of others and attempts to maximise the positive impact of the joint efforts of all actors.

33) The on-going conflict resolution efforts and the volatile security situation were all part of the context in Northern Uganda at the outset of the investigation. In an effort to address concerns expressed by local leaders and demonstrate respect for on-going peace talks, the Office maintained a low public profile during the investigation in Northern Uganda. At no time, however, did the Office stop its investigation.

34) The Office has expended significant efforts to engage in a dialogue with the local community in Uganda and to assess the interest of the victims. Since February 2004, the Office conducted 20 missions to the field to meet with local and international stakeholders in order to understand the context and the interests of victims. In March and June 2006, the Office, as part of a Registry outreach programme, held in-depth workshops with over 150 traditional leaders, over 120 NGOs, 60 local government representatives, and 50 religious leaders from across Northern and Eastern Uganda.

35) In addition to field missions the Office also invited local leaders for meetings in The Hague. In March 2005, the Office invited Acholi local government leaders, members of the Ugandan Parliament, and religious and traditional leaders to The Hague to meet with the Prosecutor. This meeting resulted in a greater understanding between the parties and an agreement to continue dialogue in pursuit of the common goal of ending violence. In April 2005 another meeting was held with an expanded list of delegates from Acholi, Lango, Ateso and Madi areas. This meeting enabled the Office and community leaders to build consensus around the issues of traditional justice mechanisms and the Office's pursuit of those most responsible. The conversations reaffirmed the Office's understanding of the importance of stopping external support for the LRA and the parties issued a joint statement appealing to the Government of Sudan "to continue cooperating with the Government of Uganda, the ICC, international actors and all stakeholders in an effort to bring peace to Uganda."[7]

36) In October 2005, the Office signed an agreement with the Sudan to execute the LRA arrest warrants. Although the Office has no ability to arrest suspects on its own initiative, it has developed strategies to support arrest efforts. One of these strategies is to galvanise international cooperation and deter external supply and support to the LRA. As a consequence of this and other efforts, the LRA lost its safe haven and moved its headquarters from the Sudan to the DRC border. Crimes allegedly committed by the LRA in Northern Uganda have drastically decreased since the arrest warrants were issued, although alleged LRA criminal activity remains significant in Southern Sudan and even in the DRC.

37) In May 2006, new efforts towards a conflict resolution agreement gained momentum, resulting in a cessation of hostilities in August 2006. The Office will continue to stay apprised of developments in these negotiations. Channels of communication have been established with the Government of Uganda and other relevant actors in this initiative.

(iii) The Darfur Investigation

38) On 31 March 2005, under Resolution 1593, the Security Council referred the situation in Darfur, the Sudan to the Prosecutor, affirming that justice and accountability are critical to achieving lasting peace and security in Darfur.[8] The intrinsic link between peace and justice was reinforced in Resolution 1674 on the

[7] ICC-OTP-20050416-99-En

[8] United Nations Security Council Resolution 1593 (2005).

protection of civilians in armed conflict which concluded that the prevention of armed conflict requires a comprehensive approach and that ending impunity—through appropriate national and international mechanisms – is essential to ensuring the non-recurrence of abuses.[9] This clear acknowledgement of the important links between justice, peace and security, just two years into the development of the Court, is a great achievement in the evolution of the role of international justice. The referral aroused strong reactions from within the Sudan, and the Government has pledged to investigate and prosecute all relevant matters itself.

39) Immediately following the referral, members of the Office travelled to Geneva, Switzerland, and on 5 April 2005 they received more than 2,500 items, including documentation, video footage and interview transcripts that had been gathered by the International Commission of Inquiry for Darfur ("Commission"). On the same day the Prosecutor also collected a sealed envelope from the UN Secretary General containing the conclusions reached by the Commission as to persons potentially bearing criminal responsibility for the crimes in Darfur. The Prosecutor did not consider this list of names to be binding; rather, the Office's view is that the list represents the conclusions of the Commission. The Prosecutor read the list and re-sealed it as the Office proceeds on the basis of its own investigations, carried out independently and autonomously.

40) Respect for the existing laws and the judicial system in the Sudan is paramount. Even in cases referred by the Security Council the admissibility test must be performed and the Office must respect the principle of complementarity. The Office therefore spent two months conducting a thorough analysis of the judicial activities in the Sudan based on information provided by the Government of the Sudan relating to the Sudanese justice system, the administration of criminal justice in various parts of Darfur and traditional systems for alternative dispute resolution. The Office also based its analysis on interviews with more than a dozen experts regarding national proceedings relating to crimes within the jurisdiction of the Court allegedly committed in Darfur, mechanisms available for individuals to report crimes and gain access to justice as well as the *ad hoc* mechanisms that have been created by the Sudanese authorities in the context of the conflict in Darfur. Based on this analysis on 1 June 2005 the Prosecutor determined that there was "sufficient information to believe that there are cases that would be admissible in relation to the Darfur situation."[10] In stating the conclusion of the Office, the Prosecutor

[9] United Nations Security Council Resolution 1674 (2006).
[10] http://www.icc-cpi.int/library/cases/ICC_Darfur_UNSC_Report_29-06-05_EN.pdf (p4).

emphasized that "this decision does not represent a determination on the Sudanese legal system as such, but is essentially a result of the absence of criminal proceedings relating to the cases on which the [Office] is likely to focus."[11] An investigation into Darfur was thus opened on 6 June 2005. The Office continues to conduct an on-going assessment of the Sudanese legal system's handling of these matters.

41) Identifying those persons with greatest responsibility for the most serious crimes in Darfur is a key challenge for the investigation. The complexity of the conflict in Darfur exacerbates this challenge, given that it involves multiple parties, varying over time throughout the different states and localities.

42) In addition, the on-going conflict has prevented the Office from investigating on the ground in Darfur, as the necessary security conditions are not present for victims, witnesses and staff members. In addition to a moral obligation, the Office is under a legal duty to protect victims and witnesses under articles 54.1 (b) and 68.1 of the Statute. The absence of a functioning and sustainable system for their protection continues to prohibit an effective investigation inside Darfur. The Office has therefore investigated alleged crimes and activities that have occurred in Darfur without going to Darfur.

43) Since the investigation's start over one year ago, the Office has conducted more than 50 missions to 15 countries, screened close to 500 potential witnesses, taken almost 70 formal witness statements, and collected and reviewed more than 9,700 documents. The Office has consulted with scores of expert organisations and individuals, and has retained a number of expert consultants to build in-house knowledge of areas of particular importance, such as the incidence of sexual violence and assessment of mortality rates.

44) The Office's requests for cooperation have extended to the Sudanese government. In response to requests from the Office, the Government of the Sudan facilitated four visits of a delegation of the Office to the Sudan. The first mission focused on the modalities for cooperation and a discussion relating to the Office's policies and ICC procedures. On the Office's second mission to Khartoum in February 2006, the delegation benefited from an extensive programme of meetings with local, judicial and law enforcement authorities. The Sudanese government cooperated with the Office, "allowing unfettered access to the requested officials in meetings that were formally video recorded."[12] The Office delegation met

[11] http://www.icc-cpi.int/library/cases/OTP_ReportUNSC_3-Darfur_English.pdf (p9).
[12] http://www.icc-cpi.int/library/cases/OTP_ReportUNSC_3-Darfur_English.pdf (p.9).

extensively with judges, prosecutors, representatives of the police force and other government departments. During this mission the Office gathered significant amounts of information to determine whether the Government of the Sudan has dealt with, or is dealing with, the types of cases that the Office is likely to select for prosecution. In May 2006, the Government of the Sudan provided a written report responding to questions submitted by the Office, providing information on various phases of the conflict from the Government's perspective on matters ranging from military and security structures operating in Darfur to the legal system governing the conduct of military operations and the activities of other parties to the conflict.[13]

45) The third mission to the Sudan, in June 2006, involved further fact-finding activities, including meetings with military officers to further clarify the written report.

46) The Office has concluded eight agreements with international organisations and bodies, with additional cooperation agreements pending to assist in the Darfur investigation. Similarly, approximately 40 requests for assistance have been, or are in the process of being, fulfilled.

47) It is the belief of the Office that effective justice may be delivered to the victims of the crimes in Darfur either at a national level, where the domestic authorities are genuinely willing and able to prosecute those most responsible for the most serious crimes, through the ICC, or via both domestic and international mechanisms.

c. Proceedings and Litigation

48) The most important development in the Northern Uganda and DRC situation was the issuance by Pre-Trial Chambers II and I of arrest warrants as explained above.

49) In addition, Pre-Trial Chamber II issued requests for arrests and surrender to Uganda, the DRC and the Sudan in furtherance of these warrants for the named LRA commanders who were moving between these three countries. Once all required security measures were in place, the arrest warrants were unsealed in October 2005. Since then, the Office has requested, and the Chamber has serially unsealed, additional parts of the record, in order to keep proceedings as transparent as security considerations permit. A number of documents remain under seal, or are

[13] http://www.icc-cpi.int/library/cases/OTP_ReportUNSC_3-Darfur_English.pdf (p.9).

available in redacted form. The Prosecutor has requested that the Pre-Trial Chamber unseal a large portion of the remainder of the information in the record and, once the Pre-Trial Chamber has determined whether to maintain current sealing or redaction orders, to enter into the record reasons justifying its decisions.

50) Since Thomas Lubanga Dyilo's initial appearance before Pre Trial Chamber I on 20 March 2006, there have been a series of pre-trial hearings related to the scope of disclosure prior to his confirmation hearing.

51) Under the guidance of the Pre-Trial Chamber, the Office has collaborated with other organs of the Court to handle the unique investigative opportunity in the DRC case, the sealing of arrest warrants in order to maintain security and protect the investigation, and the execution of arrest warrants.

52) The Office continues to raise foundational issues with the Pre-Trial Chamber and Appeals Chamber for their consideration. These issues include, *inter alia*:

a. Different forms of victim participation in the investigation phase;
b. the form of disclosure of exculpatory information;
c. security matters for/with regard to the victims;
d. the respective responsibilities of the Office, the Pre-Trial Chamber and the Appeals Chamber; and
e. matters such as fair trial rights of the accused raised in monitoring reports.[14]

Part 2: Policies and Protocols

53) The tension between the Office's need to consistently meet the highest levels of judicial standards and the need to create standards and policies that are tailor-made to meet the Court's unprecedented mandate has led the Office to pursue institution-building and policy and protocol development with the same rigor with which it has pursued its investigative and prosecutorial activities.

54) In response to this tension, the Office spent its first three years developing and shaping its policies and regulations. Since the beginning of this process, the Office has consulted with experts familiar with *ad hoc* tribunals and other international justice efforts to assist in drafting provisional regulations. Office regulations and

[14] http://www.ibanet.org/images/downloads/hri/04_2006_April_ICC_IBA_Monitoring_Report.pdf.

policies were shaped over the course of the first three years through development of draft documents, continued consultation exercises on key policy issues, incorporation of lessons from similar experiences at similar institutions and revision based on the Office's own experience. Based on this experience, the Office is currently adopting final regulations in order to articulate clear standards suitable for the Office that will continue to ensure judicial integrity going forward. Below is a description of the process undertaken by the Office to develop its policies.

55) Between mid-August 2002 and the swearing in of the Chief Prosecutor in mid-June 2003 the Advance Team conceived and commenced several expert consultation processes with a view to preparing solid foundations for the establishment of the Office. These efforts included consulting with more than 125 criminal justice experts and visiting national prosecution institutions with experience in large, complex cases, like the Serious Fraud Office (UK) and the *Generalbundesanwalt beim Bundesgerichtshof* (Germany).

56) As a result, the Office produced a draft Policy Paper and draft Regulations that identify the mission and organisation of the Office, establish a code of conduct for its members and provide guidelines and standard operating procedures to be followed in the fulfilment of various tasks of the Office, such as the commencement and conduct of investigations and prosecutions, the management of information and evidence, and the external communications of the Office.

57) On 17-18 June 2003, following the swearing in of the Chief Prosecutor, the Office held the first public hearing to present its policies and to welcome the reactions of the public, including States Parties, NGOs and academics. The Office incorporated some of these comments into a "Paper on Some Policy Issues before the Office of the Prosecutor" ("Policy Paper")[15] and its Annex.[16] The Policy Paper highlights the Office's approach to complementarity and the Office's strategy of focused investigations and prosecutions. The Office is currently in the process of revising its Regulations to incorporate the experience gained and reflect the current status of the procedures used.

58) With regards to **complementarity**, the Office has developed and adopted a *positive approach*, meaning that it encourages genuine national proceedings where possible; relies on national and international networks; and participates in a system

[15] Available at: www.icc-cpi.int/otp/otp_policy.html.
[16] Available at: www.icc-cpi.int/library/organs/otp/policy_annex_final_210404.pdf.

of international cooperation. Under this system of complementarity, much of the work done toward achieving the goals of the Statute may take place in national systems around the world. Thus, the number of cases that reach the Court or its judicial proceedings should not be the sole or even decisive measure of its effectiveness. On the contrary, increasing numbers of genuine investigations and trials at the national level may well illustrate the successful functioning of the Rome system as a whole. In this circumstance, Office inactivity with regard to investigation and prosecution should be measured as a success.

59) The Policy Paper also established that the Office will **focus its investigative and prosecutorial efforts** on *the most serious* crimes and on *those who bear the greatest responsibility* for these crimes, as explained in paragraph 2(a).

60) The Annex to the Policy Paper provides additional information and includes provisional regulations on the handling and analysis of information submitted through referrals and communications.

61) The Office has continued to undertake consultations on its regulations and on policy issues. In 2003, consultations supported the development of policy papers on "Complementarity in Practice"[17] and "State Cooperation and Investigation".[18] Three years later, in 2006, consultations informed the Office's policy approach and paper on "Case Selection" and on the "Interests of Justice". The "Interests of Justice" policies and paper were shaped with the help of a discussion process and meeting in Cape Town, South Africa, organized by the International Center for Transitional Justice in February 2006. The Office anticipates continuing to seek input from experts, individuals and organisations that are experienced in the field of international justice.

62) The Office also participated in two annual colloquia of international prosecutors in Arusha, Tanzania and in Freetown, Sierra Leone in order to exchange information and learn from the experience of the other prosecutors in international tribunals. A third colloquium, which will take place in The Hague in October 2006, is currently being organized.

63) Since November 2003 the Office has also been engaged in the formulation of a prosecutorial strategy. The first draft was completed in February 2004, and a new strategy was articulated in 2006. Although this plan is coordinated with the overall

[17] Available at: www.icc-cpi.int/otp/complementarity.html.
[18] Available at: www.icc-cpi.int/otp/otp_statecoop.html.

Court Strategic Plan, the prosecutorial strategy is independent and was developed after extensive consultation with all staff members within the Office and senior managers of the other organs.

64) In addition to these general policies, the Office has developed standard operating procedures and has formulated over 130 **draft policies, guidelines and standard operating procedures** related to specific aspects of its work. These protocols address subjects such as:

a. complementarity analysis;
b. cooperation (e.g., in general, with Interpol);
c. handling and classification of security;
d. source evaluation, evidence sampling and management;
e. crime scene investigation information management;
f. impartial investigations and unique investigative opportunities;
g. investigative best practices relating to interviewing practices and guidelines; for different types of witnesses (e.g., sexual crime witnesses and suspects);
h. guidelines and questionnaire for investigating sexual and gender crimes;
i. guidelines for investigating child-related crimes and child-witnesses;
j. exonerating circumstances and disclosure; and
k. organisational issues such as equal employment opportunity and treatment for staff members, travel policies and guidelines for the use of field interpreters.

Part 3: Management and Organisation

65) In order for the Office to fulfil its mandate, the management and organisation of the Office itself must address several challenges; specifically, (i) how to structure the Office to deal with conflicts that take place in different parts of the world, in different languages and in different settings; and (ii) how the Office can fulfil its mandate without a state apparatus—without a foreign affairs ministry, a justice ministry or a police force. Internally, integration and cohesiveness of the staff must take into account the different legal and cultural models and different backgrounds possessed by staff members coming from all over the world. The Office structure must maintain the independence and integrity required for a prosecutor's office and the independent management established in article 42(2) of the Statute, while relying on services provided by a common administration shared with judges and defence

lawyers. The Office's management and organisation must also provide a good platform for maintaining impartiality while receiving cooperation from states, international organisations and NGOs. All of these management and organisational needs must be taken into consideration alongside the overarching consideration of cost-effectiveness.

66) The Office structured its management and organisation based on a development process similar to that pursued for the Office's policies and regulations described above. In developing its structure, the Office benefited greatly from regular discussions with, and recommendations from, the Committee on Budget and Finance ("CBF").

a. Structure of the Office

67) Tackling the problems described above requires a multi-disciplinary and collaborative approach. No single set of skills is sufficient to fulfil the tasks of the Office alone. The Office has therefore confirmed an interdisciplinary structure bridging the strengths of different parts of the Office. Specifically, the Office is guided by strategic oversight provided by the Executive Committee, comprised of the Chief Prosecutor and the heads of the three divisions, which defines the Office policies and supervises the operations of the project-driven joint teams. Each of the joint teams -- the core operational units of the office -- works on different cases (DRC, Northern Uganda, or Darfur) and is supported by the three divisions (Jurisdiction Cooperation and Complementarity Division, Prosecutions Division and Investigations Division). The divisions are responsible for maintaining specific knowledge, staff training, recruitment and consistent quality levels.

68) The Court has consolidated its administrative functions and the Office relies primarily on the Registry's capacity as a service provider. Many achievements of the Office would not have been possible without the services provided by the Registry through this structure. To address the tension between independence and a common administration, the Office has worked with the other organs of the Court to establish a division of tasks that will contribute to cohesive operations while enabling the Prosecutor to maintain and pursue an independent strategy and the Registry to preserve its neutrality. Increased clarity and reliability in the cooperation between the Office and the Registry is anticipated with the implementation of the Court strategic plan, implemented through service level agreements between the service providers and requesting entities within the Office. Due to the Office's administrative reliance on the Registry, the Office has no substantial administrative

support areas of its own and maintains only a small Services Section which coordinates the needs and requests for services of the Office's divisions and acts as a liaison point for the service providers from the Registry and the requesting entities within the Office.

b. Human Resources of the Office

69) It is of the utmost importance that the Office selects the most competent professionals from around the world. In making its selections, the Office seeks the highest standards of efficiency, competency and integrity, in accordance with article 44(2) of the Statute.

70) In order to maintain its independence and efficiency, the Office relies on its ability to recruit and retain the best staff members. The challenge of this dimension of the Office is finding, selecting and attracting staff from across the globe. This challenge was easily addressed at the beginning because of the attractiveness of the mission of the Court and the broad range of positions available, in terms of skills needed and geographic representation sought. The formal system of competition-based hiring caused the Office to receive a wide range of applications from all over the world, yielding an applicant pool characterized by exceptionally qualified people. The task of finding and attracting a deep and broad pool of applicants has become more difficult as available positions are currently defined by more specific needs and gaps in the Office and narrower specifications for geographic representation among new hires.

71) Once highly skilled professionals are attracted and selected, a significant challenge is managing the combined effect of the pace of the investigations with the need for a rapid integration into the Office and the harmonisation of new people coming in from all over the world at different times. The Office has devoted significant efforts to adjust to this challenge, seeking to harmonise knowledge, standardise techniques and to train new staff, while creating channels for on-going integration of new staff and fostering Office unity.

72) Procedures for hiring through public competition were established early on. The Office initially sought to fill the top-level positions and then to fill other positions according to the needs and activities of the Office. For reasons of urgency, the first legal advisor and the first Chef de Cabinet were appointed without competition. The initial filling of these two positions without competition was not problematic because the two individuals selected for these roles were so highly qualified and

well-known that there was no doubt about their appropriateness for the roles. By Office policy, all positions were required to be renewed and filled by open and transparent competition based on the Statute's requirements. In 2007 all of the Office's posts will have been recruited through a process of public competition.

73) The growth of the Office was exponential: five-fold the first year, more than double the second and still increasing by 25% in the third year. In June 2003, there were 5 professionals including the Chief Prosecutor, and 6 support staff in the Office. In June 2004, there were 27 professionals including the Chief Prosecutor, and 16 support staff. In June 2005, there were 66 professionals including the Chief Prosecutor, and 31 support staff. Finally, in June 2006, there were 81 professionals including the Chief Prosecutor, and 43 support staff. Over the lifetime of the Court, as of June 2006, a total of 146 staff members have been hired into the Office.

74) The rapid expansion of Court activities, exponential growth of the Office and the immense energy required to maintain the pace of the Office present challenges to maintaining Office consistency, team unity and training. As mentioned, the Office seeks to attract the most qualified individuals in the field of international justice. Retaining these individuals presents major challenges because, as evident in the exit interviews of departing staff, these individuals continually receive prestigious employment offers and are attracted to return to their home jurisdictions. Additionally, many departing staff members came to the Court on leaves of absence for fixed durations which have expired. As of June 2006, 22 staff members out of the 146 hired by the Office prior to June 2006 have left the organisation, 14 of whom left before their contracts expired. Exit interviews were conducted with most of the departing staff in order to keep track of the reasons for departure as well as to evaluate the quality of the Office's performance in the management of its human resources. The information collected in the exit interviews informs the current development of management initiatives to implement work policies and standard operating procedures, increase feedback from managers to staff members and to create more cohesive leadership across the Office. The Office is currently identifying the appropriate attrition rate for its staff.

75) Demographic and Gender Breakdown: As of 1 August 2006 the gender distribution in the Office is 39% female and 61% male. In the two top levels (Deputy Prosecutor and D1) the proportion of female representation is 50%. The following table indicates the geographic breakdown of Office staff:

Region	Actual	Target
Africa	16.46%	12.73%
Asia	3.80%	7.50%
EE	8.86%	6.95%
GRULAC	10.13%	15.34%
WEOG	60.76%	57.40%

76) As exhibited in the above table, the Office has exceeded its target recruitment for staff members from Africa, Eastern Europe ("EE") and Western Europe and Other Group ("WEOG") and has fallen short of its target recruitment from Asia and Group of Latin America and Caribbean Countries ("GRULAC").

77) The Office aims to draw and build upon the knowledge and expertise of both young and experienced professionals through Internship and Visiting Professional placements. As of 1 August 2006, the Office has had a total of 161 interns and 12 visiting professionals, representing 55 different nationalities. 66% of the 166 interns were female. Many interns have applied for full-time positions, however, only 4 (less than 3%) succeeded in public competitions, attaining full-time positions. The majority of the Internship and Visiting Professional placements offered within the Office are of a legal nature. However, applicants from other disciplines are also accepted for non-legal placements. The Office is committed to the aims of the Programme and endeavours to provide a mutually beneficial placement that provides professional development for the individual participants and raises awareness of and support for the mission of the Office in their wider professional and national communities.

Part 4: Relationship with External Actors

78) The lack of a state apparatus forces the Court to rely on cooperation from institutions which cannot receive instructions from the Court. Office operations in the field rely on cooperation from referring states, other states involved in the conflicts under investigation, States Parties, international organisations, NGOs, and academics.

79) The Presidency is responsible for the Court's general external relations and the Court's common external communication strategy, while the Prosecutor has

authority over specific external relations necessary to fulfil the mandate of the Office.

80) Building networks of international cooperation and judicial assistance has proven to be essential in the Office's first years and the Office anticipates increasing reliance on these relationships as its cases develop further. To secure cooperation, the Office has approached a wide range of partners seeking to establish the arrangements necessary for effective investigations and prosecutions.

81) Cooperation includes various forms of practical and logistical support that are indispensable for the performance of investigative activities, such as assistance to the investigators in the field, transportation, security and accommodation, as well as for the performance of specific evidence-gathering measures.

a. Relationships with International Organisations, States and NGOs

(i) Assembly of States Parties and its Committees

82) The Office is pleased with the strong levels of support received by the Assembly of States Parties, the Bureau and the CBF. The support has been positive, substantial and constructive and the dialogue has consistently been fruitful, fostered through a cooperative relationship.

(ii) States Parties

83) With regard to cooperation from States Parties, Part 9 of the Statute provides the legal framework for the rendering of various assistance measures, including the arrest and surrender of persons and the provision of other forms of cooperation. In order to enhance such cooperation the Office has entered into a limited number of State-specific agreements. Examples include the arrangement of modalities for the conduct of operations in states where the Office is carrying out its investigative activities, such as Uganda and the DRC. Other agreements have related to the provision of classified information, as foreseen in article 54(3)(e) of the Statute. The conclusion of arrangements, particularly for the provision of classified information, often require extensive negotiations in order to provide the necessary assurances to information providers, as well as to ensure that the information is supplied in a manner that can be of optimal use to the Office, as provided for under the Statute.

84) The cooperation required of States Parties with regard to arrests and surrender is part of the Court's design: the Court assumes responsibility for the legal aspects; while States ensure that the suspects against whom warrants are issued are arrested and surrendered. The Court does not have a mandate to execute arrests. Thus without the help of states and other actors, the Court is unable to fulfil its mandate. The surrender of Thomas Lubanga Dyilo is an important example of successful cooperation. Although Thomas Lubanga Dyilo was detained within the DRC under national proceedings, his arrest necessitated a complex process involving cooperation with the territorial state, States Parties and international organisations. Specifically, French authorities provided the airplane used for transport and the Security Council cooperated by quickly lifting the travel ban.

85) Additional and even greater challenges arise when suspects remain at large. Strenuous efforts have been made and continue to be made to secure the cooperation of states and relevant organisations to arrest and surrender the suspects named in arrest warrants. The Office has collected information and developed strategies to promote these efforts and acknowledges the indispensable role of state cooperation in these efforts.

86) Cooperation is also necessary to ensure the security and well-being of victims, witnesses and investigators. Given that the Office has thus far conducted its investigations in the midst of on-going conflicts, protection can prove challenging. The Office remains constantly concerned with this issue and takes steps to effectively manage any required risks, some of which are described above.

87) After consultations with the *ad hoc* Tribunals and national systems regarding judicial cooperation, the Office created a centralized structure for all matters related to judicial cooperation. A team of specialists acts as a central authority for all incoming and outgoing correspondence related to requests for cooperation. They have created a database containing all relevant information from the States Parties regarding focal points and channels, languages of communication and implementing legislation; developed templates for requests for assistance to ensure both formal and material compliance with the provisions of the Statute and the relevant State's requirements; and established a database to track all requests and responses, ensure consistency and maintain quality control.

88) In the context of the three situations currently under investigation, approximately 100 requests for judicial assistance have been communicated to states and international organisations. The main types of assistance requested by the Office

to date have included the provision of information and documents and the conduct of interviews. In general the response to these requests has been positive, although there have been occasional delays in the processing of specific requests or the formation of required modalities.

89) Non-States Parties: The Office has also sought formal cooperation from non-States Parties and expects that such cooperation will facilitate the work of the Office. For example, as mentioned above, on 2 October 2005 the Office concluded an agreement with the Sudan to execute the arrest warrants for the Uganda case, mobilizing cooperation to arrest Joseph Kony and the four senior LRA leaders named in the arrest warrants.

(iii) International Organisations

90) Judicial cooperation provisions have been included in Court-wide agreements concluded with the United Nations and the European Union, while a similar agreement with the African Union is under discussion.

91) Additional Court-wide agreements include a Memorandum of Understanding ("MoU") with the United Nations peace-keeping mission in the DRC which provides for a range of assistance measures to the Office. The Office has also concluded specific arrangements on a case-by-case basis with a number of UN agencies, offices and programmes.

92) Cooperation with the Security Council is essential in the Darfur situation and was critical, as mentioned, in the successful transfer of Thomas Lubanga Dyilo to The Hague.

(iv) NGOs

93) NGOs played a crucial role in the establishment of the Court, especially through the work of the Coalition for the International Criminal Court ("CICC") and have continued to form a vital part of the Office's comprehensive strategy and fulfil various complementary roles within the scope of the Court. The Office regularly conducts meetings and consultations with NGOs and thus far has had contact with over 300 NGOs in the three situations before the Court. Some NGOs assist in maximizing the Court's impact by giving trainings about the Court and advocacy to ratify and implement the Rome Statute, while others have helped to shape the Office's framework and policies or have given advice on proceedings and provided

legal opinions on the Office's work. Some NGOs have been active in seeking referrals for the Court, while others have assisted the Office in identifying witnesses and assisting in their protection and care. The Office has also benefited from the work of several NGOs in their collection of information relevant to crime pattern analysis, their provision of leads on potential evidence and their collection of evidence or provision of statements themselves. The Office acknowledges the invaluable collaborative work of NGOs.

94) It is anticipated that NGOs will represent victims in Court, while others will continue to be crucial to outreach activities. Finally, some NGOs fulfil an important function by monitoring the Court's proceedings. Despite the important role that NGOs play in the work of the Court, the Office is continually mindful of the risks NGOs take and seeks to avoid jeopardizing NGO independence or the independence of the Office.

b. The Office's Proactive Approach to Cooperation with External Actors

95) The Office recognizes that productive cooperation cannot simply rely on unilateral action of external actors. Rather, as part of the positive complementarity concept, the Office acknowledges that cooperation works in two directions. The Office has therefore developed legal tools to facilitate deep and sustained cooperation and empower domestic criminal jurisdictions. Specifically, the Office has created electronic "Legal Tools" which provide legal information (international and national legislation, case law, and Court preparatory works), commentaries and software in order to facilitate the effective application of international criminal law. The legal tools are comprised of 13 collections and databases, together with four legal research and reference tools: the "Case Matrix", the "Elements Commentary", the "Proceedings Commentary" and the "Means of Proof" master document.[19]

96) The Case Matrix is a law-driven case management application that represents a significant innovation in approaching the investigation and prosecution of international crimes under the Rome Statute. As of August 2006 third parties have translated it into Bahasa Indonesian and there have been requests to have it translated into Khmer for the Extraordinary Chambers in Cambodia, as well as into Mandarin Chinese. Once the technical aspects have been finalized, the Office intends to share the Case Matrix with the general public. Most of the other databases and

[19] The Legal Tools are currently being developed with the cooperation and assistance of selected institutions with the required expertise, such as the Norwegian Centre for Human Rights in Oslo (Norway) and the Institute of Informatics and Law of the University of Saarland (Germany).

collections in the Legal Tools are already available to the public through the Court website, representing over 25,000 documents. Taking into account the complementary nature of the Court, the Office hopes that these Legal Tools will not only assist the work of the Court, but will also play a role in harmonizing the development of international criminal law and will support international cooperation with domestic efforts to promote the rule of law.

c. External Communications

97) In accordance with the "one-Court" approach, the Court has established an inter-organ working group to coordinate external communications undertaken by the different organs. The Registry is responsible for managing general public information, outreach, relations with victims and the transparency of judicial proceedings. The Presidency is considered the external face of the Court and is responsible for situating the Court in the international landscape, building acceptance of international justice in the international community. The Office is responsible for building support and cooperation for Office activities; explaining Office policies and activities; and explaining Office positions in litigation. The inter-organ working group has also identified key partners and target audiences of public information, constraints to coordinated communications, and message themes that all three organs can share.[20] The Registry and Office have already successfully operated jointly in the field for combined external communications.

98) In conducting its external communications the Office faces two different challenges. First, the Office must communicate and engage with a variety of different audiences to achieve the cooperation needed and raise the preventative and deterrent impact of cases under investigation and prosecution. Second, the investigation phase requires discreetness and confidentiality, which frequently limits public information to low-key, muted and focused information efforts. Public communications with external audiences risk jeopardizing the workings of the Office and any communications must take into account the complexity of operations and constraints such as confidentiality and the protection of victims, witnesses and staff. The weight of this constraint differs per situation, within situations, and over time. An aggressive communications strategy that magnifies the work of the Office may address the first challenge. However any communications strategy will necessarily be shaped and perhaps limited by the second. After the trial begins, the

[20] "Integrated Strategy for External Relations, Public Information and Outreach" (Internal Document, ICC).

second problem disappears and the public nature of the Court's hearings provides clarification and explanation of the cases.

99) Where possible and when appropriate, the Office provides complete and timely information to the media, and the public. The Office continually re-evaluates its approach to communications and assesses how proactively and publicly it operates, based on the stage of case development.

CONCLUSION: Transitioning to the next phase of the Court

100) For the past three years, the drive of the Office has been largely the result of the Office focus on the selection of situations, the conduct of investigations, and requests for arrest warrants. The Pre-Trial chambers, the Office and relevant areas within the Registry bore the main burden of conducting these activities. With the issuing of the arrest warrants in the Northern Uganda and the DRC situations, and the confirmation hearing for the first DRC suspect scheduled for 28 September 2006, the Court is transitioning to an entirely new operational phase.

101) The Court is becoming a more complex and multifaceted organisation in which judges will issue rulings, victims will participate in proceedings and, in due course may receive compensation, and States Parties' support will be needed in all areas, notably in securing suspects against whom arrest warrants have been issued.

102) Until this work has begun in earnest and several trials have been concluded, it will be too early to truly measure the impact of the Office. Instead, this report provides a comprehensive resource by which to follow what the Office has accomplished thus far.