



*Address to the United Nations General Assembly*

*30 October 2008*

*Judge Philippe Kirsch  
President of the International Criminal Court*

*(English only version)*

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Mr. President,

I am very pleased today to present the fourth annual report of the International Criminal Court to the United Nations.

Ten years ago, the General Assembly set the stage for the creation of the International Criminal Court when it convened the Rome Conference to draw up the Statute of the Court. Since then, the Court has grown into a full-fledged independent judicial institution. It is backed by 108 States Parties.

In my remarks today, I would like to:

- Update you on developments at the Court over the past year,
- Take stock of where the Court stands today, ten years after the Rome Conference, and
- Share some thoughts on the future of the Court.

I. Developments

Mr. President,

Four situations were before the Court during the past year. Three were referred to the Court by States Parties to the Rome Statute and concern situations on their own territories. The fourth was referred to the Court by the Security Council, acting under Chapter VII of the United Nations Charter. In this regard, it is useful to recall that, while the Statute permits

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the Prosecutor to begin an investigation *proprio motu* in accordance with certain conditions, he has not yet done so. All of the situations before the Court reflect the will of States or of the Security Council.

In the situation in the Democratic Republic of the Congo, preparations continued for the trial of Mr. Thomas Lubanga Dyilo before Trial Chamber I. He is accused of enlisting, conscripting and using children under fifteen to participate actively in hostilities. On 13 June 2008, the Trial Chamber ordered a stay of the proceedings. The Chamber determined a fair trial was not possible at that time due to the non-disclosure by the Prosecutor of potentially exculpatory evidence. On 2 July 2008, the Chamber consequently ordered Mr. Lubanga's immediate release. The decision to suspend the proceedings was upheld by the Appeals Chamber on 21 October. However, on the same day, the Appeals Chamber reversed the decision of the Trial Chamber concerning Mr. Lubanga's immediate release. The Appeals Chamber found the Trial Chamber had not considered all relevant factors and remanded the issue of Mr. Lubanga's release to the Trial Chamber for reconsideration. In the meantime, but separate from the judicial proceedings, the Prosecutor worked with the providers of the potentially exculpatory evidence to lift the confidentiality restrictions which have prevented him from disclosing materials to the defence or making them available to the judges. The Prosecutor has submitted a new application for the judges to review the materials. The decision on Mr. Lubanga's release and the Prosecutor's new application are pending before the Trial Chamber.

In the same situation, the Democratic Republic of the Congo surrendered Mr. Mathieu Ngudjolo Chui to the Court on 7 February 2008. His case was subsequently joined with that

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of Mr. Germain Katanga who had been surrendered to the Court in October 2007. In September of this year, Pre-Trial Chamber I confirmed seven charges of war crimes and three charges of crimes against humanity against each of these two individuals. Last Friday the joint file of Mr. Katanga and Mr. Ngudjolo was transmitted to a new Trial Chamber which is beginning preparations for their trial.

In the situation in the Central African Republic, Belgium surrendered Mr. Jean-Pierre Bemba Gombo to the Court on 3 July 2008. He is suspected of committing war crimes and crimes against humanity. Pre-Trial Chamber III has begun preparations for a hearing on the confirmation of the charges against Mr. Bemba. The date for this hearing remains to be determined.

In the other cases, proceedings continued but were limited by the lack of arrest and surrender of the following seven individuals:

- In the situation in the Democratic Republic of the Congo: Mr. Bosco Ntaganda,
- In the situation in Uganda: Mr. Joseph Kony, Mr. Vincent Otti, Mr. Okot Odhiambo, and Mr. Dominic Ongwen, and
- In the situation in Darfur, Sudan: Mr. Ahmad Harun and Mr. Ali Kushayb.

The Court has issued requests for arrest and surrender to States on whose territories these individuals may be found. Under the Statute of the Court, States Parties must arrest and surrender the suspects in accordance with their national laws. Where they require assistance to do so, the support of other States and international organizations is indispensable.

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On 14 July 2008, the Prosecutor applied to Pre-Trial Chamber I for a warrant of arrest for the President of Sudan, Mr. Omar Al-Bashir. This application is pending before the judges. They will decide independently whether or not there are reasonable grounds to believe Mr. Al-Bashir committed crimes within the jurisdiction of the Court. On 15 October, the Chamber requested the Prosecutor provide by 17 November additional supporting materials in relation to some aspects of the application.

The Prosecutor's investigations continued in all four situations. Additionally, the Prosecutor analyzed information on crimes which may have been committed within the jurisdiction of the Court in other situations. The Prosecutor has publicly indicated that he is looking into situations concerning Colombia, Georgia, Afghanistan, Côte d'Ivoire and Kenya.

### II. Stock-taking

Mr. President,

I would like to turn now to where the Court stands today, ten years after the Rome Conference was convened by the General Assembly.

The ICC was born out of the international community's experience. Fifty years after the historic Nuremberg and Tokyo tribunals, serious international crimes continued to be committed with impunity. Justice was too often bargained away for the prospects – no matter how unlikely – of short-term political gains – no matter how minimal. As a result, victims endured the double indignation of suffering harm and being denied recourse to

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justice. Entire regions were destabilized as widespread or systematic crimes triggered or exacerbated conflict. Societies seeking to emerge from conflict often struggled with reconciliation and with the reestablishment of the rule of law.

Against this background, the creation of the ICC reflected the resolve of the States to give a permanent institutional dimension to a fundamental shift in international relations which had started a few years earlier – from the culture of impunity to an approach based on respect for justice and the rule of law.

The Court did not displace existing national or international mechanisms for resolving conflicts and ensuring justice. It was set up by States to complement their own national jurisdictions.

The Rome Statute reaffirms the Purposes and Principles of the United Nations Charter. While not being a part of the UN system, the Court exists in relationship with the United Nations.

The Court is nevertheless a fundamentally different institution. Like justice itself, the Court is impartial and enduring. As a permanent and independent institution, it stands as a bulwark against the temptation, no matter how well-intentioned, to bargain away justice. It does not partake in political negotiations to start or to stop investigations or proceedings. All are equally liable for crimes committed within the jurisdiction of the Court.

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Since the entry into force of the Rome Statute in 2003, the Court has adhered strictly to its independent and impartial mandate. Before beginning each of the four current investigations, the Prosecutor analyzed the available information and concluded there was a reasonable basis to begin an investigation. The judges scrutinized each application by the Prosecutor for a warrant of arrest to ensure the objective criteria of the Rome Statute were met. In all of their judicial proceedings, the Pre-Trial, Trial and Appeals Chambers have faithfully upheld the Rome Statute, guaranteeing the rights of accused persons and suspects and giving effect to the rights of victims.

The accomplishments of the Court are not its own alone. They are due in large part to the States, international organizations and civil society who have supported it. The significance of their contributions has been evident in at least three ways.

First, States have entrusted the Court to investigate and prosecute crimes fairly and independently where national courts are unwilling or unable to do so. As mentioned earlier, the Prosecutor has not yet taken up any situation *proprio motu*. Each situation under investigation has been referred to the Court by a State Party or by the Security Council. In three of these four situations, States have asked the Court to look into situations on their own territories. In other words, the Court has never yet chosen itself to intervene in any situation. It has only complied with its judicial mandate as requested by the States concerned or by the Security Council.

Second, the cooperation of States, international organizations and civil society has been essential to the Court's functioning. The Court's judicial proceedings were made possible by

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States surrendering suspects, protecting victims and witnesses and providing relevant information. I am pleased to report that the United Nations has consistently provided exemplary cooperation to the Court. Civil society has been an equally vital source of support for the Court – encouraging ratification of the Rome Statute, assisting States to develop necessary implementing legislation, and providing a critical review of the Court’s activities.

Third, States, international organizations and civil society have been indispensable in ensuring respect for the Court’s judicial mandate. The Court has been effective only because it is respected as an independent, purely judicial institution whose decisions will be enforced. The Court has earned this respect in part through its own strict adherence to the Rome Statute, but also as a result of the cooperation and the public support of others. In this regard the Court greatly appreciates the Secretary-General’s continued assistance and his reiteration of the independence of the Court. Similarly, a number of States Parties and States not Party to the Rome Statute have helped to create a climate of support through their words and their actions. Where States have been silent, civil society has critically filled the void.

### III. Outlook for the future

Mr. President,

I would like to turn now briefly to the future of the Court.

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This is a critical stage for the ICC. It is still far too early to pass judgment on the success of the Court. The early indications are decidedly positive, but the Court's success in the long-term will depend on a number of factors.

Most fundamentally, the success of the Court will depend on it fulfilling properly its own mandate. The Court must and will continue to do its part to ensure its judicial independence and impartiality. It will investigate and prosecute crimes within its jurisdiction in accordance with the principle of complementarity. It will guarantee the rights of the accused and of suspects. It will interpret the Rome Statute and develop a body of jurisprudence. It will protect victims and witnesses. It will give further effect to the rights of victims to participate. It will address questions of reparations to victims. And in all its proceedings, it will continue to strive for the highest standards of efficiency and transparency.

However, it is important to bear in mind at all times that the ICC– and the ICC system with its checks and balances and its limitations on the power of the Court – was created by States as a judicial mechanism to assist in the achievement of certain objectives mentioned in the preamble of the Rome Statute. The system can only work effectively if all actors in the system play their part. The success of the court will also depend on the actions of others.

First, the extent of ratification of the Rome Statute will affect the ability to which the Court can exercise its jurisdiction. For it to exercise jurisdiction truly globally, universal ratification will be necessary.

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Second, the court will continue to require the cooperation of States, international organizations and civil society. Legal obligations to cooperate with the Court must be met, and additional cooperation will be needed. Most obviously, States need to execute warrants of arrest or support the execution of these warrants in accordance with the Rome Statute and their international obligations. Broader support will also be needed in protecting witnesses and agreeing to enforce sentences. States which have not yet done so are invited to enter into negotiations with the Court to conclude agreements on the protection of witnesses and the enforcement of sentences.

Third and most critically, it is vital that States, international organizations and civil society continue to respect and to ensure respect for the Court's independence and its purely judicial mandate. Their statements or their silence in certain circumstances can have significant impacts on the effectiveness of the Court. Similarly, it is important to avoid any misperceptions with respect to the judicial nature of the Court or with regard to the relationship between justice and peace. The creation of the ICC in 1998 was based on the conviction of States that justice and peace are complementary. The Court's mandate and its independence must be reaffirmed and respected. It is particularly important to do so where the circumstances seem difficult.

#### IV. Conclusion

Mr. President,

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As well as the 10<sup>th</sup> anniversary of the Rome Conference, this year marks the 60<sup>th</sup> anniversary of the adoption by the General Assembly of two ground-breaking legal texts: the Convention on the Prevention and Punishment of the Crime of Genocide and the Universal Declaration of Human Rights. The former made clear the fundamental and universally accepted principle that the prevention of the worst crimes requires that perpetrators be punished. The latter gave voice to the equally fundamental and universal principle that justice must be independent, impartial and equally applied without distinction.

These principles today are embodied in the Rome Statute and in the activities of the International Criminal Court. That there was need for the Court is a testament to how often these principles were violated in the past. That the Court was in fact created is a testament to the international community's commitment to putting an end to impunity and to establishing a new politics based on justice and the rule of law. How well we succeed in realizing this commitment is up to us. The Court will do its part. But the support of this body – the General Assembly – and all of its Member States who worked so tirelessly for the creation of the Court will be critical.

Thank you.