Cour
Pénale
Internationale

International
Criminal
Court

Speech by the ICC Registrar, Ms Silvana Arbia

at the conference

"Justice for all? The International Criminal Court - 10 year review of the ICC"

at the University of New South Wales (UNSW) in Sydney, Australia

14 February 2012

Excellencies,

Ladies and Gentlemen,

It is my great pleasure to address this gathering at a historic moment for the international justice system and the International Criminal Court: 2012 – its 10th anniversary. Allow me to convey my deep appreciation to the University of South Wales, the Australian Centre for Human Rights and the Government of Australia for this excellent initiative.

2012 will mark the thirteenth consecutive year that I have served international justice, in my capacity as Chief of Prosecutions at the ICTR and now as Registrar at the ICC. I have learned a tremendous amount and have always strived to contribute to the great humanitarian project of international justice.

Let me start by recalling what we really tried to achieve in Rome. I say **we,** because I had the immense privilege to be a member of the Italian delegation at the time. We really wanted a court that was independent, strong, effective and **able** to deliver justice to respond to the "unimaginable atrocities that

deeply shock the conscience of humanity". In doing so, we also reminded states of their duty "to exercise their criminal jurisdiction over those responsible for international crimes" and thus we also created a system of global international justice.

In 2008, I was elected Registrar and felt immense pride and an overwhelming sense of responsibility. At that time, the Court had put in place many groundbreaking initiatives. However, a sense of disappointment with its actual operation was felt, with many feeling that the Court was operating less efficiently than the special tribunals.

Yet we seem to overlook the fact that ICC operates within a unique international setting. To begin with, the ICC implements its judicial mandate in a political environment, with ongoing conflicts, which are very fresh in the people's minds and are all linked to national or regional political issues. This situation has challenged the growing conviction at the roots of international criminal justice that there can be no lasting peace without justice. The ICC has experienced this problem several times. Moreover, in all these years, we have become acutely aware of the interdependence of the actors of this international justice system. A strong and effective Court and the unconditional and expeditious cooperation of States are fundamental to the global fight against impunity.

The Review Conference in Kampala created fresh momentum for improving the effectiveness of the Rome Statute system, resulting in the adoption of the Kampala declaration. The inclusion of a stocktaking exercise led to the review of a number of key themes - namely complementarity, cooperation, peace and justice, and the impact of the Rome Statute system on victims and affected communities. The declaration emphasised justice as a fundamental building

block for sustainable peace[1] and demonstrated that States parties are determined to continue to strengthen their efforts to promote victims' rights under the Statute.[2] Finally, the Declaration refers to the crucial issue of cooperation, with States parties declaring their resolve to strengthen their efforts towards ensuring cooperation.[3] A declaration on cooperation was also issued, followed by a resolution on cooperation at the 10th session of the Assembly of States Parties.

To date, the ICC deals with 7 situations (3 referred by States Parties, 2 by the UN Security Council and 2 *proprio motu*) and 14 cases. 9 summons to appear and 17 warrants of arrest have been issued. 6 arrest warrants have been executed. In 2011, 678 written decisions or orders were rendered and 321 hearings took place, resulting in a total of 1.051 hours. There are currently 2 ongoing trials and one trial awaiting judgement. 11.042 applications for participation in the proceedings before the Court from individuals from all situations have been submitted to the Court and, as of 1st January 2012, 4.350 applications have been accepted in the proceedings. 309 individuals are under the Court's Protection Programme. 418 lawyers from 58 countries are on the ICC list of counsel, 320 men and 98 females are qualified to represent both victims and those accused. As of 1st January 2012, 15 defence teams serve before the Court and 26 legal representatives have been authorized to represent victims. 5 field offices with approximately 100 staff members work on the ground. 702 staff members from 93 different nationalities. The Trust Fund for Victims, which was established for the benefit of victims of crimes within the jurisdiction of the Court, is currently implementing 28 projects of assistance for victims in Uganda, the Democratic Republic of the Congo and the Central African Republic.

[1] Kampala Declaration, para. 3.
[2] Kampala Declaration, para.4.
[3] Kampala Declaration, para.7.

I will address the audience today on the work of the Registry of the International Criminal Court over its first decade of existence, the challenges and successes it had faced in this unique journey and the way ahead.

I. The Registry of the International Criminal Court at ten: challenges and successes

a. Interpretation of the Rome Statute

The Rome Statute is ground-breaking in many respects. However, the right of victims to participation and their entitlement to reparation is often brought forward as one of its most unique features. Today, this is a reality and forms part of the Court's daily life.

It is the responsibility of the Registry to inform the victims of their rights, and organize their legal representation. In doing so, the working methods were adapted to local realities in each situation. The ICC was faced with challenges such as those posed by elderly victims, ensuring access to those living in remote and inaccessible locations while explaining to them the complex judicial decisions in their own local languages.

I referred in my introductory paragraphs to statistics on victims' participation. While these numbers are testament to the Registry's ability to adequately reach out to victims, the sheer volume of applicants has led to challenges in processing the applications expeditiously and has hampered their timely submission to the Chambers. The limited financial and staffing resources have put further strain on this process. However, the judges have

made efforts through creative procedural solutions[4] to manage these increased numbers. In addition, the Victims' Participation and Reparation Section, in charge of the process, conducts a thorough review of applications prior to transmission to the Chambers.

With regards to their legal representation, a list of counsel eligible to act as legal representatives of victims has been established by the Registry.[5] A legal aid system that responds to the particular circumstances of indigent victims has been developed. Its further fine-tuning, in line with the Court's judicial decisions, is ongoing. It should be noted, however, that due to the large number of victims given leave to participate, the Court favours the common representation of groups of victims. Only with experienced and dedicated counsel the jurisprudence on the scope and depth of victim participation will continue to properly and fully develop.

As the Court is awaiting the judgement in its first case, *The Prosecutor v. Thomas Lubanga Diylo* we may be witnessing new developments at the ICC with the issuance of a reparation order **if Mr. Lubanga is found guilty**. The right of victims to reparations, a key feature of the Statute, may now be given life through the interpretation of Article 75 by the judges and the establishment of the principles for reparations.

It is a universally recognised truth that a fair trial entails, *inter alia*, quality defence endowed with the necessary means to give true meaning to the principle of equality of arms. A legal aid scheme supports the defence in the implementation of its mandate. Additionally, the Registry organizes a yearly

4 Organize batch system and cut-off date for applications for victims in Bemba case.

5 Rule 16(1) of the Rules of Procedure and Evidence: The Registry is also responsible for assisting victims in obtaining legal advice, organising their legal representation and providing their legal representatives with adequate support, assistance and information.

seminar and training sessions for both defence and victims counsels on the ICC list of counsel. It is hoped that the training will be replicated nationally and/or regionally, thus strengthening complementarity.

b. <u>Operating in situations of ongoing conflicts</u>

An important aspect, often overlooked is the fact that the Court operates in situations of ongoing conflict. This heavily impacts on all aspects of the Court's functioning. In this environment, witness protection, which is one of the crucial areas contributing to effective prosecution of Rome Statute crimes and the conduct of fair trials, becomes a real challenge. The Registry's response was the establishment of a "tool kit on witness protection" that includes, *inter alia,* development of witness protection capabilities in the situation countries, by cooperating with local law enforcement on local security arrangements, resettlements or relocation measures. Cooperation with national authorities is not only beneficial for the Court, but also facilitates the transfer of knowledge and fosters the development of a national capacity on witness protection.

While judicial proceedings take place in the courtrooms of The Hague, investigations, protection of witnesses and victims, and outreach activities take place thousands of kilometres away. As early as 2005, the Court established its first field offices in Uganda and Chad. To date, the Court has 5 field offices and presences and a wealth of field expertise and experience. They have been instrumental in implementing the Court's mandate and act as the public image within the situation countries. Since 2008, I have dedicated special attention to remodelling field operations, addressing security matters for staff, with a view to rendering them more effective, thus ensuring maximum impact of the Court's work on the ground. The next challenge in

the area will be the development of the Court's exit strategy. On this key issue, I would also like to underline the fact that, bearing in mind the complementary nature of this institution, a successful exit strategy of the Court should be conceived in full consultation with States Parties and other actors of the system with a clear allocation of roles and responsibilities.

c. <u>Management of expectations</u>

With the Court being fully engaged in judicial activities, its work has become increasingly scrutinised by the entire world. To this extent, the Court's outreach programme has been established and millions of people have been targeted. The Court's outreach has been creative, interactive, adapted to the realities and specificities on the ground.

Broadening and deepening the Court's outreach efforts and thus its long term impact within a situation country is subject to the availability of resources. The Court will continue to improve its outreach efforts, partnering, where and when possible, with local networks to work towards transferring knowledge at the national level. As the experience of the *ad-hoc* tribunals shows, effective outreach is likely to contribute to the creation of domestic political will for national prosecution, thus bolstering complementarity in the long term.

d. <u>Ensuring effective cooperation</u>

The successful implementation of the Court's mandate is largely dependant on its ability to rely on predictable, sustained and effective cooperation. Without effective cooperation from States Parties in both the mandatory and non-mandatory areas as outlined in the Rome Statute (Part IX and X), the ICC

will fail. State cooperation, as many practitioners and academics have put it, is as much the strength as well as the Achilles heel of the ICC system.

The area of enforcement of warrants of arrest is a good example. To date 12 arrest warrants remain outstanding. The non-execution of these arrest warrants has the potential to erode the credibility and legitimacy of this institution. Additionally, every arrest warrant not executed still requires the Court's continued intervention and thus financial resources. At a time when financial resources are scarce world-wide, international justice is seen as an expensive commodity.

With regard to witness protection, I would like to address the issue of relocation of witnesses agreements. As a last resort, the international relocation of protected ICC witnesses is the only solution for the Court to protect witnesses where other protective measures fail. To date, the Court has concluded only 11 witness relocation agreements. Progress has been slow in concluding these agreements.

In this area and with a view to strengthening national systems, the Court has introduced a cost-neutral initiative, a Special Fund where countries that have the capacity, skills and resources, donate funds for the relocation of witnesses to countries that have the willingness to accept protected witnesses, but no capacity or resources for doing so. While this initiative has been welcomed at all levels, the reality today is that very few resources have been used. I encourage efforts by all actors within the Rome Statute system to generate publicity about the existence of the Trust Fund, the necessity to conclude agreements and to contribute financially.

Effective cooperation is dependent on the existence of implementing legislation at the national level. Only three (3) out of the seven (7) countries of situation have enacted implementing legislation. I will address this issue at the Round Table the day after tomorrow.

Weaknesses in the area of cooperation are well-known. It is now time to effectively address this issue rather than only recognizing its importance vocally in various fora.

Let me now turn to the question of the administration of this institution.

e. Use of modern technology to advance the administration of the institution

One of the Court's three strategic goals is to become a model of public administration. The ICC is a Court of the 21st century, and thus opted to become an e-Court, rather than be bypassed by modern technology. This strategic choice has also enabled and is enabling the Court to display electronically pieces of evidence in the hearings; store them electronically; give secure on-line access to the defence to various documents; allow electronic access to managers to the information needed in order to better rationalize and administer resources and also enable the organization to retrieve accurate information on its management indicators. I am referring here to systems such as Enterprise Resources System, e-Court Management System, electronic Court book, etc. These systems assist the ICC in its efforts to become more efficient. Additionally, through the existing control mechanisms such as the Office of Internal Audit, the Independent Oversight Mechanism, and the Internal and External Auditor, the organization is managing its resources judiciously.

The efficiency of proceedings and fair trial is also dependant on the ability of the suspect/accused to speak a language that he/she understands. The Court is unique in that it deals on a daily basis with various different dialects and languages: Acholi, Lingala, Sango, Zagawa, Swahili, Lendu. Some of these had to be codified in order to be transcribed and translated.

Efforts will continue to be made to further develop this unique international system of public administration.

II. Way ahead: effective interdependence

At the beginning of my address, I referred to the global international criminal justice system the Rome Statute created. The ICC is one part of this system, a fundamental part, because it is the first and only permanent, global and progressive criminal court. In the coming 10 years, the challenges I see for the Court and States Parties will lie in our ability to ensure that this interdependent relationship is functioning effectively and that it is strengthened by mutually reinforcing trust.

It took a long time to create international justice, it may take a longer time for it to play its role fully. Constructive criticism for the Court is needed, but it will not be enough. It must be supplemented by a true commitment to make international justice work. I refer here again to the need for cooperation. Non-cooperation has a heavy cost not only in monetary terms, but also to the reputation of the Court, the States and the international justice system.

International justice is not a luxury. It is an ideal that we strive to achieve for the benefit of future generations. Let's make sure that we provide the adequate resources to make our common quest for justice a success.

Thank you.