



Annex to the Three Year Report and the Report on the Prosecutorial Strategy

During the Second Public Hearings with interested states and civil society, held in the Hague and in New York, as well as in the similar meeting with Court staff, a number of issues were raised¹ with regard to the Office of the Prosecutor's first three years and its plans for the coming three years. The Office will evaluate them carefully but considers it important to provide these short comments before the meeting of the Assembly of States Parties in order to facilitate a more informed discussion.

There was an acknowledgement of the progress that the Court has made in the last three years and appreciation for the complexity of its work. The Office is encouraged by the support it has received as it allows it to move forward with the knowledge that there is broad understanding between the Office and its stakeholders regarding the actions it has taken and its plans for the future.

On several occasions it was noted that the Office has to continue finding the appropriate balance between competing demands. Examples given included demands for justice in response to all forms of victimization and the need for a selective, focused approach (based on gravity and taking into account resources and practical constraints); and the importance of outreach versus the need for discretion in many circumstances. It was noted also that different situations will require a variation of approaches.

Questions were raised on the selection of situations. Specifically, it was noted that the concentration of the three situations in Africa contributed to a perception that the prosecution strategy was intentionally geographically-based. However, the fact that three African states have referred situations in their territory to the Office is a sign of positive support for international justice by African leaders. The geographic concentration of the three situations in Africa is a result of the strict application of the mandate of the Court to deal with the most serious crimes. Regional balance is not a criterion for situation selection under the Statute. Additionally, it should be pointed out that, based on communications it receives, its legal analysis has in fact extended to other continents. For instance, the office conducted a preliminary analysis of allegations against 25 states parties involved in the Iraq conflict.

¹ In addition to issues concerning the investigation and prosecution, some issues were raised with regard to organizational matters. One such issue was the Office's turnover, meaning the number of workers hired by the Office to replace those who have left in a given period of time. In response the Office would like to point out that its turnover rate has declined from 9 percent in 2004 to 7 percent in 2005 and 5 percent so far in 2006.

As questions were raised concerning the Prosecutor's policy of encouraging voluntary referrals, the Office confirms that the exercise of the proprio motu powers of the Prosecutor is essential for the independence of the Office, and will be used properly as a means of initiating an investigation.

On the Office's policy of positive complementarity, delegations requested more information regarding practical implementation, noting also possible budgetary implications. The Office is in the process of exploring how to develop this concept with a view to encouraging and cooperating with national judicial efforts. Issues that need to be further elaborated upon are whether the Office can turn over the evidence it has collected to national prosecutors and judges at the conclusion of the Court's trials. This is a long term process.

On the Office's policy of focused investigations and prosecutions, there was an expression of recognition that the initial appearance of Thomas Lubanga Dyilo will have an important impact. Although participants voiced understanding for the reasons that the Office decided to focus the charges on child recruitment, a horrific crime, some also expressed hope that future charges either in his case or in other cases arising out of the DRC situation will be representative of the many alleged crimes committed in the DRC since 2002. The Office is committed to continue to reinforce its interaction with victims, local communities and NGOs.

Concerning the Office's efforts to maximize its impact, particularly with a view to contributing to the prevention of the crimes falling under the Statute, a number of tools were mentioned: concerted international efforts, good communication strategies, and – when appropriate – increased visibility.

Several speakers emphasized, referring in particular to the Uganda situation, that justice is key to lasting peace and that justice and peace efforts are by no means incompatible, but rather mutually reinforcing. The Office reaffirms that the Prosecutor's specific mandate for international justice should be clearly distinguished from those bearing the responsibility for establishing peace.

The need to conduct outreach to local communities, to explain certain courses of action was also commented upon. The Office is committed to supporting the outreach work undertaken primarily by the Registry. In addition, the Office agrees with the importance of dialogue with local communities. The Office is also cognizant of the need to explain its activities and policies to a variety of other audiences, including the United Nations, the African Union, the European Union, as well as civil society, academia and others.

Both state representatives and civil society representatives commented on the need for increased cooperation by States and international organizations with the Court. The importance of exhaustive implementing legislation was stressed in this regard. Cooperation leading to the implementation of the arrest warrants in the Uganda situation was highlighted in this respect. Additionally, several state representatives explained strategies which they have adopted to mainstream Court matters within their relevant domestic organisations and made suggestions for consolidating and expanding the relationship of the Court with the United Nations, including the General Assembly and the Security Council. The Office welcomes these steps and suggestions and hopes that states will indeed utilize the suggestions presented.

It was also mentioned that it would be useful for states and civil society to have a clear indication from the Office of the types of cooperation it requires. On several occasions, both in multilateral as well as in bilateral contacts, the Office has stated general areas of cooperation. When the Office needs specific forms of cooperation it makes, in accordance with standard practice, a targeted request. It is nevertheless useful for states and others to get a better sense of the types of issues that are relevant and to make the necessary preparations (politically, legally and practically) in order to be able to comply with these specific requests on short notice, when and if they are made.

Cooperation in arresting individuals sought by the Court is a key form of cooperation needed. Although it will primarily require cooperation from territorial states, others should be prepared to cooperate to the extent needed. With regard to other forms of cooperation, the Court is in the process of discussing different forms of cooperation that most State Parties would be in a position to provide, such as support in international, multilateral and regional institutions and cooperation in the areas of logistics and witness protection.