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Editorial

This month marks the departure of the Court's first registrar, Bruno Cathala. Five years ago, when he arrived at the Court as its first employee, there were no courtrooms, no cases, and no other staff. Mr Cathala has since helped the Court evolve from an empty building, a few staff on loan from the United Nations, and equipment left over from previous tenants into the institution it is today, with a staff numbering over 700.

Thanks to Mr Cathala's commitment to realising the Court's mission, today's Registry is truly a cornerstone of the Court's early success. Mr Cathala has devoted particular attention to establishing a fair and equitable court of justice, and to ensuring that the assistance offered by the Registry both facilitates and safeguards the rights of the defence and the victims. His understanding of the importance of justice being seen to be done as an intrinsic part of the Court's mandate is reflected in his dedication to the establishment of the Court's outreach programme, a project that has evolved into an essential element of the Court's activities. The Registrar's support for the establishment of the Court's six field offices in four different countries has brought the Court closer to the affected communities. Many important aspects of the Court's current operations, as well as its strategic plan, bear the indelible hallmarks of his initial vision.

I am grateful for all of Mr Cathala's contributions in often challenging circumstances and wish him the same successful record of accomplishments in his new judicial role.

Philippe Kirsch, President of the ICC

Joinder of the cases against Germain Katanga and Mathieu Ngudjolo Chui

Pre-Trial Chamber I (PTC I) decided on 10 March to join the cases against Germain Katanga and Mathieu Ngudjolo Chui on the ground of the suspects' alleged joint criminal participation in the same events set forth in their respective warrants of arrest.

Germain Katanga, a Congolese national and alleged commander of the *Force de résistance patriotique en Ituri* [Patriotic Resistance Force in Ituri] ('FRPI'), was surrendered and transferred to the Court on 17 October 2007, following a warrant of arrest delivered under seal by PTC I on 2 July 2007, and unsealed on 17 October 2007.

Mathieu Ngudjolo Chui, a Congolese national and alleged former leader of the National Integrationist Front (FNI), was arrested by the Congolese authorities and transferred to the International Criminal Court (ICC) on 7 February 2008, following a warrant of arrest delivered under seal by PTC I on 6 July 2007, and unsealed on 7 February 2008.

Both Germain Katanga and Mathieu Ngudjolo Chui are being prosecuted for their co-responsibility for crimes allegedly committed during, and in the aftermath, of the joint attack on the village of Bogoro (Ituri) by the FNI and FRPI on 24 February 2003.

The Defence for Mathieu Ngudjolo Chui submitted before PTC I, leave to appeal against the decision to join the cases, on 17 March, on the basis that the pre-trial chamber does not have the authority to decide on this issue and that such a decision should to be taken by a trial chamber. According to the Defence, the interpretation made by PTC I of article 64 (5) of the Statute is not consistent with the principle of legality. The article stipulates that: "…upon notice to the parties, the Trial Chamber may, as appropriate, direct that there be joinder

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The Office of the Prosecution - Why Mathieu Ngudjolo Chui's arrest is significant?

On February 7, Mathieu Ngudjolo Chui became the third individual to be arrested and transferred to the International Criminal Court's (ICC) detention centre in The Hague. He is charged with three counts of Crimes against Humanity and six counts of War Crimes.

Mr Ngudjolo Chui's arrest and surrender to the Court has special significance for the Office of the Prosecutor (OTP), marking as it does a move to a second phase of investigative activities in the Democratic Republic of the Congo (DRC). Investigative work will now extend beyond the Ituri region. Additionally, in terms of international co-operation, it is a milestone event, demonstrating a new level of understanding and support for the system created in Rome to fight impunity by investigating, prosecuting and therefore excluding from the political scene the world's worst criminals.

A new phase in the DRC investigation

When the Office decided to open its first investigation in the DRC, in June 2004, the initial focus was on the district of Ituri, in the far north eastern Oriental province of the country. The region had been struck by the most horrific crimes: humanitarian agencies have reported that more than 60,000 people have died as a direct consequence of the conflict between 1998 and 2003, in a region where resources have always attracted international interest and where armed groups have resorted to brutal tactics, including killing, raping, enlisting children and transforming them into killers.

The first case in this investigation is the case of *The Prosecutor v. Thomas Lubanga Dyilo*. Mr Lubanga Dyilo was formally charged by the Prosecutor in August 2006 for conscripting, enlisting and using children under 15 to participate actively in hostilities in Ituri, for destroying those children and using them to destroy other innocent civilians. Lubanga Dyilo was the leader of the Ituri armed group known as the UPC-FPLC. He will be the first person to stand trial at the ICC.

The Prosecutor's second case also focuses on the Ituri district. It concerns crimes committed jointly in early 2003. Germain Katanga, former leader of the FRPI forces, and Mathieu Ngudjolo Chui, one of the top leaders of the FNI, allegedly bear the greatest responsibility for ordering allied troops under their command to carry out horrific crimes in the village of Bogoro, in effect wiping out the village.

With the arrest of Mr Ngudjolo Chui, the Office of the Prosecutor is now moving on to a third investigation in the DRC, with other applications for arrest warrants to follow in the coming months and years. Different options are being analysed about our third and possibly fourth cases.

There are reports of sexual violence of shocking brutality, forced displacements and killings in the Kivu provinces, allegedly committed by a number of different actors, including regular soldiers of the FARDC[1], members of the FDLR[2], member of local *Mai Mai* groups and members of Laurent Nkunda's CNDP forces[3]. Interestingly, an arrest warrant against Mr Bosco Ntaganda, the current chief of staff of the CNDP, has recently been unsealed; indicted with crimes committed in Ituri, we find him, again, today, active in the Kivus, where crimes are now being committed!

Crimes in the Kivus are widespread, establishing the chain of command will take time ; in the interval, the Office will endeavour to put 'complementarity in practice' and support, within its statutory obligations, efforts by national and international actors to promote national proceedings, maybe through a system of 'circuit judges'.

Other options for investigation include the case of high officials in the region who have financed and organised militias.

A milestone in States commitment to ending impunity

The co-operation received from the DRC authorities, with the support of the international community, allowed for the arrest and surrender of individuals suspected of committing horrendous crimes.

However, the arrest of Mathieu Ngudjolo Chui is of particular significance. While Thomas Lubanga Dyilo and Germain Katanga were already in detention in the DRC prior to the Court's requests for arrest and surrender and to their actual surrender to the Court, Ngudjolo Chui was a free man; a man who was involved in the disarmament and demobilisation process (DDR) and a man who had benefited from an amnesty in the past. He was a colonel in the Congolese army.

This was essentially the first 'real' arrest in the DRC and for the Court, and it was performed with the co-operation of the DRC authorities, the UN and Belgium, which provided a plane.

The arrest of Mr Ngudjolo Chui was also significant in that it did not break down the DDR process. It did not rekindle conflict in Ituri. It proved, contrary to the suggestion of some commentators, that ICC intervention does not prolong conflict nor does it create more violence. It is not true in the DRC, it is not true in Uganda, and it is not true in Darfur.

Co-operation by States is key to fulfilling the commitment made in Rome to end impunity, a commitment which needs to be borne in mind in the context of any conflict management initiative. The law is not only for the Prosecutor, the judges and the criminals. Other actors must adjust to the new legal framework and are doing it. The DRC Goma agreement rightly excludes any amnesty for crimes within the jurisdiction of the Court, reaffirming that the Rome Statute commitment to end impunity is not negotiable.

And the word is spreading. In the Central African Republic, as the government and rebel movements are negotiating agreements and the country is engaging in a national dialogue, the Prosecutor has made clear to all that such processes would have to be consistent with the Rome Statute. Ambassador Francois Lonseny Fall, the UN special envoy and mediator of the accords, gave clarity and transparency to all when he stated "Offences involving the ICC cannot be annulled and there is no immunity for these crimes".

1. Forces Armées de la République démocratique du Congo, the regular DRC army.
2. Forces Démocratiques de Libération du Rwanda.
3. Conseil National pour la Défense du Peuple.

An update on the events of *The Prosecutor v. Thomas Lubanga* case

Thomas Lubanga Dyilo in the courtroom © ICC-CPI

Trial Chamber I held a two-day status conference on 12 and 13 March during which a number of issues which need to be resolved prior to the start of the Lubanga trial were discussed with the parties. The final deadline for the disclosure of material by the Prosecution to the Defence was set on 13 March to 28 March 2008.

On 9 November 2007, Trial Chamber I set the date for the start of the first trial at the ICC in the case of *The Prosecutor v. Thomas Lubanga Dyilo* to 31 March 2008. On 12 March 2008, the Trial Chamber announced that the trial date had to be put back to 23 June 2008. The principal reasons for the Chamber's decision concerns the two interrelated issues of disclosure and protection of witnesses. The Prosecution is required by the constituent texts to provide the Defence with, *inter alia*, the evidence it intends to rely on at trial. In addition, article 67(2) of the Rome Statute confers on the Defence an entitlement to disclosure of evidence that the Prosecution believes 'tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence' - otherwise known as exculpatory evidence.

Closely linked to the issue of disclosure and further complicating how disclosure is carried out is the issue of protection of witnesses. In some instances, revelation of the identity of a witness may endanger a person's life or that of their family's. Pending resolution of referrals for protection to the Victims and Witness Unit, applications for redactions in order for the Prosecution to discharge its disclosure obligations whilst safeguarding the security of the persons concerned were made. Another problematic area encountered as far as the Prosecution's disclosure obligations are concerned relates to disclosure of exculpatory material. As a result of these issues it became necessary to delay the commencement of the Lubanga trial, (some important issues in relation to the disclosure of potentially exculpatory material are still pending). The decision on disclosure issues, responsibilities for protective measures and other procedural matters was issued on 24 April 2008.

In regard to the disclosure obligations of the Defence, Trial Chamber I issued a decision on 20 March 2008. The existence of any such obligation was challenged by the Defence which submitted that the accused has the right not to incriminate himself, and accordingly that the Defence has, in principle, no obligation to reveal its evidence or lines of Defence, except in relation to evidence regarding an alibi or for excluding criminal responsibility. Furthermore, the Defence argued that it was only required to afford inspection of the material which it will use in the trial. Finally, the Defence submitted that as the issue of admissibility was only raised at the time of presentation of evidence, it could not provide pre-trial disclosure of admissibility arguments. The Prosecution therefore urged the Chamber to adopt an expansive interpretation of the Defence's obligations to disclose.

The Chamber held that a degree of Defence disclosure was established by the Rome Statute in order to secure a fair and expeditious trial and to assist the Chamber in its determination of the truth. The decision noted that the Chamber may order the disclosure of evidence which tends to exonerate the accused of his criminal responsibility. It was emphasised that only proportionate disclosure obligations should be imposed on the Defence in order to ensure the trial process is fair. *Inter alia*, the Chamber ordered the Defence to file three weeks in advance of the trial a document setting out in general terms the defences the accused intends to rely on and any substantive factual or legal issues that he intends to use. The Defence filed a request for leave to appeal this decision on 31 March 2008. The request was denied on 8 May 2008.

Consistent with the Court's aims to provide a forum for victim participation and bring justice closer to the victims, the possibility of holding part of the trial in the Democratic Republic of Congo (DRC) was suggested. A detailed feasibility study by the ICC's Registry identified a suitable location and concluded that holding at least part of the trial would be achievable. However, the Government of the DRC informed the Court that the location identified was inappropriate, citing security reasons. The Chamber made an oral ruling on 12 March 2008 that the Court would not hold any part of the trial in the DRC. A detailed background on this issue, including the position of the parties and legal representatives of the victims is included in the public redacted version of the Chamber's decision on disclosure issues, responsibilities for protective measures and other procedural matters issued on 8 May 2008.

As with the role and extent of victim participation in trial, the role of some participants remained to be expounded. The Chamber addressed the role of the Office of Public Counsel for Victims (OPCV) in its decision of 7 March 2008. Uncontroversially, the OPCV argued that the Regulations of the Court were drafted in general terms to allow for a flexible definition of the OPCV's role. However, both the Prosecution and the

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Defence argued that the role of the Counsel should be limited. In particular the Defence argued that legal representation of victims by the Counsel should be temporary. The Chamber held that the Office of Public Counsel for Victims should continue to represent the victim applicants until the Chamber had issued a decision on their applications to participate. Thereafter the Registrar will be directed to arrange for legal representatives to act for them.

Furthermore, the Chamber held that the OPCV may fulfil a wide variety of functions during the trial stage. However, the Office's role should be determined by the Chamber. It thus directed that the "Office concentrates its limited resources on the core functions given to it under the Rome Statute framework […] to provide support and assistance to the legal representatives of victims and to victims". Accordingly, the Office may appear before the Chamber in respect of specific issues which the Chamber listed.

The second issue addressed by the Chamber in this decision was the OPCV's access to certain documents. The Office argued that it should be granted access to documents which may have an impact on victims' personal interests. In relation to this, the Prosecution submitted that access to confidential portions of the record by applicants should only be granted "in highly exceptional situations". The Defence submitted that the Rules of Evidence and Procedure do not allow for access to the case record by victim applicants pending a decision on victim status. The Chamber held that the Registry should disclose to the Office of Public Counsel for Victims the relevant parts of documents which it listed, subject to certain conditions.

Another ongoing important aspect for the work of the Court, whilst not a substantive legal issue, is the use of electronically providing documents to facilitate proceedings, thereby saving time, money and resources. This deceptively simple aim has produced numerous administrative and organisational hurdles as the Court attempts to enable remote electronic access to documents and evidence for counsel in Paris and Kinshasa. In addition, the Chamber addressed the parties' and participants' requests and concerns on the matter of the procedure for electronic management of the case materials through an e-Court protocol in its decisions issued on 24 January and 13 March 2008.

As these issues illustrate, the deceptively administrative nature of the term 'procedural issue' obviates the complexity and, at times the extensive consequences such issues have for victims, their safety and participation, the relationship of the Court with other international institutions such as the UN, the rights of the accused to a fair trial and the nature of the Court in the future. Without any internal precedents, all must be addressed in a timely yet thorough manner in order to construct the Court's own jurisprudence and provide a solid basis from which the first trial and all future trials may progress.

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or severance in respect of charges against more than one accused". Pre-Trial Chamber I granted the application for leave to appeal, on 9 April 2008, in relation to "whether the Chamber erred in violation of the principle of legality in its interpretation of article 64(5) of the Statute and rule 136 of the Rules".

Further to this, PTC I refused to grant interim release for Mathieu Ngudjolo Chui on 27 March 2008. The Defence submitted an appeal against this decision.
The appeals against the decision of the joinder and against the decision for interim release are, amongst other appeals, pending before the Appeals Chamber.

Q & A with the Registrar - trial *in situ*

The Court considered the possibility of conducting a trial *in situ* for the Lubanga case, what are the reasons for considering such a possibility?
As such this question is not for me to answer, because it is not the Registry who can not start such an initiative, nor make a decision to sit in another state than the host State. This decision is taken by the judges considering the interests of justice.
However, I can say that in general it is an important principle of the administration of justice that for a process to be fair it needs to be as open and transparent as possible. The reasons behind this principle are manifold and include the restorative and deterrent effect of a Court's work. All efforts which could contribute to the visibility of proceedings amongst the population most closely affected thereby should be undertaken wherever possible. Involving the local population is important so as to ensure their ownership of the proceedings. This in turn is an important element of the legitimacy of the International Criminal Court (ICC). Indeed, it was interesting to note that the defence team in the Lubanga trial expressed an interest in having the ICC proceedings take place within the territory of the Democratic Republic of the Congo (DRC). The benefits which would accrue are not only symbolic, but also logistical and practical, with the possibilities for effective coverage and reporting of the trial within the DRC potentially being greatly enhanced by having some or all of the proceedings *in situ*.

Do you think that a trial *in situ* could be beneficial for the population of the DRC?
In the right circumstances, the fair and transparent administration of justice can be nothing but beneficial to the population of the country on whose territory the crimes are alleged to have happened. Our Outreach Unit in the field has confirmed this also for the DRC.

What are the reasons for deciding after all to conduct the trial in The Hague?
The Registry has conducted a feasibility study with regard to having parts of the trial within the DRC. I was very pleased with the work of the team that carried out the study and paved the way for trials *in situ* within a very short timeframe. In fact, Judge Fulford expressed his appreciation for the efforts made by the Registry. As part of the study we were in contact with the Government of the DRC, which after having evaluated the situation, felt that the presence of an ICC trial in the location we had identified - which was a region of the country to which peace had been only relatively recently restored - could risk destabilising that peace. Consequently, the trial chamber decided, to conduct the trial in its entirety in The Hague.

Do you think the Court will look at conducting a trial *in situ* in future?
The preparatory work that the Court has completed demonstrated that a trial *in situ* is eminently practicable from a logistical point of view. Thus, even though the trial *in situ* did not take place for the Lubanga case, the work carried out has nevertheless proved to be useful. In the right circumstances, and if there would be on balance a benefit to the local population and the financial implications would be reasonable, then I can see this idea finding traction once more.

Bureau of the Assembly of States Parties

Mr Bruno Cathala, Ms Hlengiwe Buhle Mkhize, Mr Renan Villacis and Ms Gaile Ramoutar attend the seventh session of the ASP © ICC-CPI/ASP

Seventh session of the Assembly

At its second meeting, the Bureau approved the provisional agenda for the seventh session of the Assembly (ICC-ASP/7/1). In addition, the Bureau decided that the first resumption of the seventh session, at which the Assembly would elect six judges and six members of the Committee on Budget and Finance, shall be held at United Nations Headquarters in New York in the week of 19 January 2009 and, in this connection, approved the respective provisional agenda (ICC-ASP/7/2).

The Bureau fixed the nomination period for both elections to run from 21 July to 13 October 2008.

As regards the second resumption of the seventh session, the Bureau requested that facilities at United Nations headquarters be tentatively reserved from 6 to 10 April 2009, pending the final decision to be taken by the Assembly at its seventh session.

Facilitators of the Working Groups

As regards The Hague Working Group, the Bureau designated, at its third meeting, H.E. Ms Hlengiwe Buhle Mkhize (South Africa) as the facilitator for the Strategic Plan of the International Criminal Court, with a special focus on the issues of outreach and victims. The Co-ordinator of The Hague Working Group, H.E. Ms Kirsten Biering (Denmark), would address all other aspects of the Strategic Plan. Mr Masud Husain (Canada) was designated as the facilitator for the proposed programme budget for 2009.

Furthermore, the Bureau decided to allocate the issue of geographical representation and gender balance in the recruitment of staff to the New York Working Group and, at its fourth meeting, held on 29 April 2008, designated Mr Eden Charles (Trinidad and Tobago) as the facilitator for the issue. In addition, the Bureau designated Mr Marcelo Böhlke (Brazil) as the facilitator for the Plan of Action for achieving universality and full implementation of the Rome Statute.

Review Conference

At its fourth meeting, the Bureau was informed of the outcome of the informal consultations held by the New York Working Group on 15 April 2008, on the issue of the Review Conference, in particular the venue thereof.

The Bureau agreed to accept the invitation by the Government of Uganda to carry out a site-visit to inspect and assess the facilities which the Government of Uganda offered to make available for the Review Conference.

A group comprised of H.E. Mr Rolf Fife (Norway), focal point of the Assembly on the review of the Rome Statute, Mr Sabelo Sivuyile Maqungo (South Africa), facilitator of the New York Working Group on the Review Conference, Mr Renan Villacis, Director of the Secretariat of the Assembly of States Parties and Mr Steven Row, Protective Security Officer of the International Criminal Court, visited Uganda on 14 and 15 May 2008 to assess issues of a practical nature, such as the capability and capacity to host the conference. The Bureau requested the group to submit a report on the outcome of the visit prior to the resumed sixth session.

Tenth anniversary of the adoption of the Rome Statute

At its third meeting, the Chairperson provided an update on possible events for the celebration of the 10th anniversary of the adoption of the Rome Statute on 17 July. The draft programme included addresses by the Secretary-General of the United Nations, as well as senior officials of the Court. The Bureau agreed that part of the event would be devoted to an award ceremony in honor of H.E. Mr Arthur Robinson, former President of Trinidad and Tobago, for his outstanding contribution to the cause of international justice.

The Hague Working Group

The Hague Working Group held its third meeting on 18 March 2008, at which the President-elect of the Assembly, H.E. Mr Christian Wenaweser (Liechtenstein), provided an update on the activities of the Bureau.

The Co-ordinator of the Working Group, H.E. Ms Kirsten Biering (Denmark), introduced a concept paper, outlining the work to be undertaken by the Group and setting out the priorities and objectives for 2008.

At its fourth meeting, held on 25 April, the Working Group received an update on the issue of the permanent premises by the Chairperson of the Oversight Committee, H.E. Mr Jorge Lomonaco (Mexico), as well as considered the issues of the Strategic Plan of the Court on outreach and victims, co-operation and the budget.

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The Republic of Madagascar ratifies the Rome Statute of the International Criminal Court

The Government of Madagascar deposited its instrument of ratification to the Rome Statute on 14 March 2008. The Statute will enter into force for Madagascar on 1 June 2008, bringing the total number of States Parties to the Rome Statute to 106.

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As regards the Strategic Plan, the Working Group noted that the provisions of the Rome Statute on the rights of victims to participation, protection and reparation would form the starting point for the Group's discussions. The facilitator stated her intention to also consult non-governmental organisations on this issue. Furthermore, the Working Group noted that the question of victims' participation in Court proceedings was before the Appeals Chamber and that its decision could have implications for both the proposed programme budget and for the Court's strategy on victims, which the Court was developing.

The focal point for the issue of co-operation, H.E. Mr Yves Haesendonck (Belgium), briefed the Working Group on his activities and on his proposed work plan. He indicated that a letter would be sent to Embassies in The Hague and Brussels, as well as to Missions in New York, requesting that a contact point on co-operation be identified.

On the issue of the budget, the Working Group received a briefing by the Chairperson of the Committee on Budget and Finance, Mr David Dutton (Australia), on the outcome of the tenth session of the Committee, held from 21 - 25 April. The facilitator for the budget indicated that he had requested representatives of the Court to identify any policy issues that could arise in the proposed programme budget for 2009, and expressed the wish that these issues be considered and resolved by the Working Group prior to the seventh session of the Assembly.

In this connection, the Co-ordinator of the Working Group indicated that Ms Irina Nita (Romania) had agreed to serve as facilitator for the issue of family visits of indigent detainees, which would be considered in the context of the Working Group's discussion of the budget.

Oversight Committee

At its fifth meeting, held on 19 March 2008, the Oversight Committee of States Parties for the permanent premises of the Court agreed to engage a recruitment agency in advertising the position of Project Director. At its eighth meeting, held on 14 May, the Oversight Committee agreed on the composition of the selection panel, taking into account the need for expertise and equitable geographical representation. In consultation with the experts, the sub-group on the recruitment of the Project Director would develop a set of questions the selection panel may wish to pose to the candidates in the final interview.

As regards the architectural design competition, as at 1 April, the closing date for submissions, 170 applications had been received from 33 States, representing the five regional groups. The pre-selection meeting of the jury was held on 15 and 16 May 2008 and resulted in the selection of 20 applicants which will be invited to submit a detailed design for the permanent premises of the Court.

Furthermore, the Oversight Committee continued consideration of the issue of financing the permanent premises of the Court, focusing, *inter alia*, on the advice provided by the Committee on Budget and Finance in the report on the work of its tenth session.

Committee on Budget and Finance

The Committee on Budget and Finance held its tenth session from 21 to 25 April 2008 in The Hague to discuss, *inter alia*, the programme performance of the 2007 budget, audit matters, issues related to human resources and the financing of the permanent premises.

While welcoming the improved implementation of the 2007 programme budget (90.5 per cent), the Committee observed that the higher implementation in some parts of the Court had not been the result of the full realisation of the stated assumptions of the budget and that overspending had occurred. The Committee felt that is was important for the Court to continue to work towards more accurate budgetary planning.

The Committee provided advice on a transfer of funds from one major programme to another to cover the costs associated with the disability pension of a former judge of the Court and, in this connection, noted that, pursuant to the Financial Regulations and Rules, the transfer would require the authorisation of the Assembly of States Parties.

On the issue of audit, the Committee recalled the recommendation of the External Auditor that the independent audit committee should consist of a majority of external independent representatives, and, in this connection, urged the Court to appoint the external members as soon as possible.

The Committee commended the Court's human resources policy and its efforts to increase the rate of recruitment. In particular, it noted that there had been an improvement in the geographical representation and gender balance in the recruitment of staff of the Court and encouraged the Court to continue its efforts in this regard. Furthermore, the Committee invited the Court to consider additional ways to improve geographical representation, such as through national competitive examinations or through advertising vacancies in national newspapers of underrepresented or non-represented States.

The Committee agreed to hold its eleventh session from 8 to 16 September 2008.

Ambassador Rolf Fife (Norway), focal point of the Assembly on the review of the Rome Statute, and Mr Sabelo Sivuyile Maqungo (South Africa), facilitator of the New York Working Group on the Review Conference © ICC-CPI/ASP

ICC hosts the first of three diplomatic briefings for 2008

From left to right: Mr Renan Villacis, Mr Bruno Cathala, Mr Philippe Kirsch and Mr Luis Moreno-Ocampo © ICC-CPI

On 18 March 2008, the Court hosted the first of three diplomatic briefings held each year as part of the Court's commitment to ensuring an ongoing dialogue with the diplomatic communities of The Hague and Brussels. At this twelfth diplomatic briefing, the President, Prosecutor, Registrar and Director of the Secretariat of the Assembly of States Parties (ASP), provided updates on key developments at the Court over recent months. In particular, the important advancement of judicial proceedings over the past few months was highlighted as the Court enters a new phase, marked by the approach of the first trial and the recent arrest and transfer to The Hague of a third person in the context of the situation in the Democratic Republic of the Congo, as well as the necessity to maintain co-operation with the Court.

In his overview of recent judicial developments, the President addressed several recurring legal issues which are common to most of the different situations and which have important implications for the work of the Court. These included the practical and legal challenges posed by the modalities of victim participation in the proceedings, the system of disclosure of evidence and the need to both safeguard the rights of the defence and to consider issues of protection of victims. The President also briefly recalled some of the institutional changes that have occurred at the Court over the past few months, namely the recent election of three new judges, Judge Nsereko (Uganda), Judge Saiga (Japan) and Judge Cotte (France) and the election of the new Registrar, Ms Silvana Arbia (Italy).

The Prosecutor likewise gave an update on the status of ongoing cases and investigations, noting in particular the arrest and transfer of Mathieu Ngudjolo Chui, as well as the Prosecutor's visits to Colombia (in October 2007) and the Central African Republic (in February 2008). The Prosecutor highlighted the support generated by the States Parties for the work of the Court on Darfur by attending the Security Council meeting of 5 December in New York, as it coincided with the meeting of the ASP. He insisted it was a message that the ASP, the non-governmental organisations and the Court gave to the Security Council. It was also a strong message to perpetrators and potential perpetrators of crimes, showing that the Court enjoys wide support. Finally, it was a strong message of commitment to the victims. The Prosecutor stressed the fact that a recurring concern in most situations under investigation or analysis is the need for States Parties to consistently maintain the commitment taken in Rome to end impunity. He indicated that such commitment needed to be particularly borne in mind in the context of any conflict management initiative.

The Registrar, speaking at his final diplomatic briefing, gave an overview of the challenges facing the Registry, emphasising that the objective is not only to create an institution aimed at ending impunity for the most serious crimes, but also to create an administration capable of rendering justice of the highest quality. He canvassed various initiatives undertaken by the Registry over the past five years to contribute to a quality of justice at the International Criminal Court. In this vein, the Registrar touched upon the Court's attributes as an organisation: providing services to the public; an organisation able to support a court of justice delivering a fair trial; and a symbolic and credible institution.

The Director of the Secretariat of the Assembly of State Parties gave an update on the sixth session of the Assembly, which was held from 30 November to 14 December 2007 in New York. He described the ongoing work of the Special Working Group on the Crime of Aggression, as well as the activities of both The Hague and New York Working Groups of the Bureau.

The complete compilation of the statements delivered at the briefing as well as the information packages distributed to states in advance of the briefing can be found at:

www.icc-cpi.int/about/Court_Reporting.html.

Latest public legal filings

For an update of all public legal filings relating to situations and cases befre the Court, please consult the ICC website at: www.icc-cpi.int/cases.html.

The Court hosts the ninth strategic meeting with non-governmental organisations

The Registrar and Prosecutor join Civil Society Representatives following the Strategic Meetings held with NGOs© ICC-CPI

The Registry and the Office of the Prosecutor (OTP) this month continued the tradition of holding regular strategic meetings with non-governmental organisations (NGOs) involved in the work of the Court. The ninth meeting held at the seat of the Court took place from 11 to 12 March 2008 for the Registry and on 13 to 14 March for the OTP.

In his introductory remarks, the Registrar, Bruno Cathala, reflected on the co-operation between the Registry and NGOs over the past five years. He also indicated that progress has been made during this period on two levels: strategic and operational. On a strategic level, Mr Cathala recalled the advancement made, through regular and transparent dialogue, with respect to the clarification of roles between the Court and the NGOs, underlining the judicial and independent nature of the Court. On an operational level, the NGOs have become more involved over the years, in the work of the Court particularly in the field, exchanging views regularly on matters such as defence, witness and victim protection, outreach and victim participation. Referring to future co-operation with the NGOs, the Registrar emphasised the importance of maintaining the delimitation of roles and clarity in pursuing dialogue. He also pointed out that a 'reflection process' could be initiated with respect to the format of the annual sessions of the Assembly of States Parties (ASP). He invited the NGOs to give consideration to this matter in order to ensure effective discussions on substantive issues at stake for the Court during the ASP sessions.

Throughout the two day meeting participants were also able to exchange views on issues related to the legal representation of victims and the accused, the ICC's strategy on counsel, the ICC's strategy on victims, the Court's outreach activities in the countries of situation, and the lessons learnt during the 2007 Assembly of States Parties.

Following on from the Registry the OTP, headed by the Prosecutor, Luis Moreno-Ocampo, launched their two-day meeting on 13 March. The Prosecutor reiterated his appreciation for the opportunity to communicate directly with the most active NGOs working in the field, and thanked the ICC Coalition for its help in organising the meeting. The Prosecutor noted that since the last meeting in September 2007, interaction between the OTP and international and local NGOs had been sustained at all levels. In particular, the support generated for the work of the OTP in Darfur by ensuring the high attendance of States Parties during the presentation of his report to the United Nations Security Council meeting on 5 December. Mr Moreno-Ocampo further commented on the strength of the message given by the ASP, NGOs and the Court, to the Security Council, as well as the perpetrators of crimes and for the victims.

The Prosecutor continued by describing the OTP's activities since September 2007, including his visit to Colombia, which his office is monitoring, to meet with victims, judges, prosecutors and national authorities. He also announced the beginning of the second and third investigations in Darfur during his report to the Security Council in December, and secured the arrest of Mathieu Ngudjolo Chui in the Democratic Republic of the Congo in early 2008. The Prosecutor spoke of his trip to the Central African Republic to meet with victims in February of this year, and how the Office is now completing preparations for the beginning of the Lubanga trial, as well as the confirmation of charges hearing of the second DRC case. He updated the participants on the current situations, including the monitoring of situations in Afghanistan and Kenya. The Prosecutor focused his intervention on co-operation issues, as well as on questions regarding victims and witness protection, which he emphasised is an imperative issue for the Court. Regarding co-operation, the Prosecutor stressed that his Office continued to request States Parties to include the issue of arrest warrants against Joseph Kony and the other senior leaders of the LRA, as well as Ahmed Harun and Ali Kushayb, on their agendas. He added that no bilateral meetings with territorial States should occur without the issue of co-operation with the ICC being mentioned, and no assistance - whether political or financial - should be provided to indictees that could facilitate their absconding from the Court. On the issue of victim and witness protection, the Prosecutor stated that the OTP would not accept any risk for these people, their families, for intermediaries or for those who might be at risk as a result of the information provided. Timely disclosure of evidentiary materials is fundamental, and the Prosecutor indicated it was his duty under article 68 of the Statute to avoid any foreseeable risk for the witnesses.

The NGOs indicated they were supportive of the work done by the Office since the last meeting, and stressed the need to ensure co-operation from States Parties and other international and regional partners in order to enforce the Court's decisions and successfully carry out the activities of the Office of the Prosecutor.

The next strategic meeting with the NGOs will take place later this year.

The ICC organises open discussions in Ituri and North Kivu

Police officers from Bunia attend a session with the Outreach Unit © ICC-CPI

As part of the Court's efforts to intensify direct engagement with communities at a local level, a series of meetings were organised in Bunia, Ituri and Béni, North Kivu in the Democratic Republic of the Congo (DRC) between 25 February to 3 March 2008. The aim of the meetings arranged by the International Criminal Court's (ICC) field Outreach Unit in collaboration with the Victims Participation and Reparations Section (VPRS) was to provide information and raise awareness of the status of the current judicial proceedings before the Court, in the DRC situation. In all, over 350 people attended.

In Bunia, representatives of human rights organisations, key civil society groups, local leaders (*chef de quartier*), women's organisations and younger people (many of them former combatants) came together from the Ituri towns of Bunia, Kasenyi, Aru, Mahagi and Mambassa to participate in the often animated, discursive debates. The main focus of the meetings was to discuss the latest judicial developments in the Thomas Lubanga Dyilo case, and the recently joined cases of Germain Katanga and Mathieu Ngudjolo Chui. Victim participation was also highlighted. Due in part to the current cases' relevance to the Ituri region, interest in the Court remains high. Many participants expressed reassurance about the transparency of the Court and the way the ICC is working in the area to dispel any possible misunderstanding regarding trial preparation and procedure, etc.

Following the Bunia meetings, the mission travelled south to Béni to initiate outreach activities in the North Kivu area. Due to its close proximity to the border with Ituri, Béni is currently a refuge for thousands of people who have fled the conflict. Many organisations working with or for victims are also based there.

In all, six open discussion sessions were held and at the first meeting, 59 human rights and development associations attended. The town's legal practitioners, led by the public prosecutor for Béni, also took an active part in this meeting. Other sessions were devoted to students, representatives of women's associations and religious denominations, and journalists. A variety of topics related to the work of the Court were discussed and explained, in particular the role and rights of victims, mechanisms used by the Court to disseminate information, and how the ICC intends to implement further outreach activities in the region.

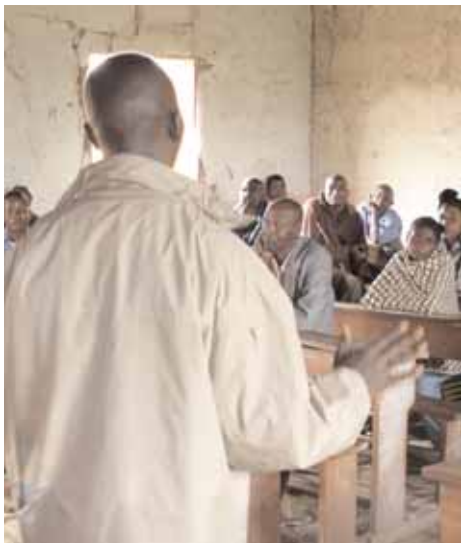
The village of Bogoro in Ituri was also targeted for the first time by the ICC in the first of a series of meetings aimed at engaging the region's working community. On 29 March, over 110 people, including fishermen, livestock breeders, and farmers as well as teachers, students and traditional chiefs were given a general presentation on how the Court works, its mandate and the current cases under investigation and awaiting trial. Participants further engaged in an open dialogue with Court officials, asking questions pertinent to the cases specific to the DRC.

On 24 to 25 March, close to 300 police officers including the chief inspector and superintendents from Bunia police station attended outreach sessions organised to increase their knowledge of the ICC. Special emphasis was given to crimes that fall within the jurisdiction of the Court and on the general principles of individual criminal responsibility. Further time was taken to discuss the irrelevance of official capacity as an argument to escape criminal responsibility before the ICC and the responsibility of military commanders and other superiors.

It was the first time that these police officers, many of whom fought in militias before joining the national police force, had attended an outreach session. Many of them took an active part in the discussions that followed particularly on the principle of complementarity - whereby the Court may prosecute cases (only) if national criminal systems do not or are unable to do so, and on issues related to reparations for victims and compensation.

The officers also requested the possibility of organising outreach activities aimed at discouraging the younger population from joining militias that are still active in the region, and pledged to provide their support to the Court in these proposed activities.

Court officers target Bogoro village, Ituri for the first time © ICC-CPI



The ICC launches schools outreach programme in northern Uganda

School children attend the launch of the ICC schools outreach programme © ICC-CPI

Consistent with the Court's outreach strategy to expand it's reach to as many different social groups throughout the region, the International Criminal Court's (ICC) field Outreach Unit targeted the younger populace in northern Uganda during March with the launch of it's schools outreach programme aimed at school pupils and university students.

Members of four senior schools in the Teso and Acholi sub-regions were invited to participate in the initial phase of the schools programme. Over 4,500 pupils aged between 13 and 19 years old, from Soroti Central Secondary School, St Joseph's College in Gulu, Kitgum High School and Y.Y. Okot Memorial College and their teachers attended. It is anticipated that over 300 schools in the northern region will eventually benefit from the expanding schools programme.

The purpose of the programme is to provide those still in education with access to beneficial information and materials about the Court that they in turn will be able to disseminate amongst their peers and other adults including their parents. This information will be further communicated to other children through an existing network of human-rights clubs and drama groups that focus on children. This network also engages in disseminating information through the media and other educational channels. The eventual aim of this process will be the participation of all sections of the community affected by the Ugandan conflict, in the judicial processes of the Court.

Activities were organised by the Outreach Unit and Victim Participation and Reparations Section (VPRS) officials in co-operation with the administration of each school and student leaders. The sessions were interactive and the students were encouraged to use role play to act out the roles of the various courtroom participants during Court sittings as a way of explaining how judicial procedure works. Presentations were made on the mandate of the Court and special emphasise was given to the Court's position on the non-prosecution of persons below the age of 18 when alleged crimes were committed. Time was allocated for school staff and students to ask Court officials questions related to the enforcement of arrest warrants, protection mechanisms for victims and witnesses before the Court, and the peace process, particularly in relation to children and the role children can play before the Court.

The school's head teachers showed their appreciation for being included in this type of programme, particularly as so many of the children attending had been affected by the conflict and urged the Court to visit other schools throughout the region. They also emphasised the need to provide children with adequate information on subjects that directly affect their lives. Recommendations were also made regarding the opportunity to train teachers in each school to serve as focal points for further outreach activities.

Women and children were also targeted when over 700 internally displaced people (IDPs) from the Obuku camp in the Soroti district, participated in a one-day-open air meeting on 7 March 2008. The event was organised by the Outreach Unit in partnership with Obuku camp leaders and a local community based organisation, Charity Rights Foundation.

A performance given by a local camp based drama group, started off the day's event, re-enacting civilian life in the region during the 21 year insurgence, and the subsequent referral of the Ugandan situation to the ICC.

The Outreach team used several scenes presented by the drama group as reference points to further explain the Court's work and its investigations. The rights and role of victims before the Court also formed part of the message. Questions were raised by several participants regarding victim reparations and compensation and these concerns were addressed by representatives from the ICC's victims participation section, (VPRS).

Obuku camp is currently home to over 1,000 civilians displaced from the six districts of Soroti, Katakwi, Kaberamaido, Amuria, Lira and Dokolo located in the Teso and Lango sub-regions.

Also in Soroti, a training session for 30 Iteso Cultural Union representatives was conducted in early March, the purpose of which was to provide members with information about the Court that they as focal points would disseminate to their immediate communities.

Finally, in collaboration with the Gulu University Guild, the ICC organised a public debate on the theme of the, 'International Criminal Justice System' that took place on the main campus of Gulu University.

The discussion, on March 14 attracted over 1,500 students and senior lecturers. The aim

of the debate was to raise student awareness of the issues related to the promotion of justice and accountability in the northern region of Uganda and to initiate more student involvement at university level. It is anticipated that students will further engage their fellow students as well as others in their local communities on matters connected to the ICC and human rights and transitional justice issues, thus promoting the principles of an international criminal justice system.

Three specialists in the field of international and human rights law and lecturers from the university facilitated the debate and initiated discussions on various topics including: 'The history of the international criminal justice system - the arguments for the ICC' and 'Understanding international crimes and different justice models - a comparison of the Special Court for Sierra Leone, the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court'.

The dean of Gulu University praised the Court for organising the outreach event and commended the way in which it created an opportunity for students and lecturers to ask pertinent questions on the relevance of the international criminal justice system to the situation in Uganda. He requested the Court to organise further programmes that would also target students.

Established in 2001, Gulu University is the first and only public university in northern Uganda and has a total of over 4,000 registered students.

It is envisaged that following the success of these events, the Outreach Unit will conduct similar activities in other parts of the country in the coming months.

The Field Office Co-ordinator in Uganda meets with local school children© ICC-CPI

Registry officials meet with Lord's Resistance Army delegation

The International Criminal Court (ICC) Registry Head of the Legal Advisory Services Section together with the ICC Registry Head of the Division of Victims and Counsels met with the Ugandan Lord's Resistance Army (LRA) delegation in The Hague on March 10, 2008, to discuss procedural issues related to the legal representation of those accused before the ICC.

As a neutral organ that facilitates fair trial, the Registry does not engage in substantive discussions with any of the parties on the merits of cases before the Court. Rather, the Registry is responsible for defence counsel matters and for receiving and distributing all documents and materials used in proceedings before the Court. Therefore, during the meeting, the Registry officials provided the visiting delegation with an overview of the Court and its organs, focusing in particular on the responsibilities of the Registry. The delegates were informed of the requirements for inclusion of counsel on the Court's list of counsel and were given clarifications on procedures and time limits for the filing of documentation and materials with the Registry. In addition, the delegation was informed about the existence of the ICC's witness protection programme and the different modalities of witness protection.

The delegation asked to be furnished with various documents including warrants of arrest, precedents for filing motions before the Court as well as the format for power of attorney.

Registry officials expressed their willingness to continue to provide the delegation with information on procedural issues as well as its willingness to facilitate the work of any defence counsel that appears before the Court.

The delegation expressed its gratitude for the information provided which they said had enhanced their understanding of how the Court functions.

Currently, the arrest warrants for LRA leaders Joseph Kony, Vincent Otti, Okot Odhianbo and Dominic Ongwen remain outstanding for Crimes against Humanity and War Crimes committed in Uganda since July 2002.

The Registrar, Bruno Cathala: the first five years of the ICC

The following commentary was written by Mr Bruno Cathala, the first Registar of the International Criminal Court who having completed his term, has now left to embark on a new position as the President of the *Tribunal de Grande Instance d'Evry*.

Mr Cathala explains, *inter alia*, what has been achieved so far and what still remains to be accomplished. His explanation provides a somewhat philosophical insight into the challenges of this judicial organisation, including those of time, space, symbolism, and integrity. He further looks at the ideal of creating a common culture, bonding the many nationalities of the Court.

In 1940, Ernest Hemingway wrote a novel entitled 'For Whom the Bell Tolls', based on his experiences as a war correspondent with the Republican Army during the Spanish Civil War, a theatre in which numerous atrocities foreshadowed what was to occur during the Second World War. The novel is prefaced by a quote from the English metaphysical poet, John Donne, who, in the 17th century, wrote: "No man is an island, entire of itself; every man is a piece of the continent, a part of the main [….] [a]ny man's death diminishes me, because I am involved in mankind. And therefore never send to know for whom the bell tolls: it tolls for thee".

We have all embarked on the adventure of humankind. We, the participants in the quest for humankind want to give it meaning according to our specific positioning in human society. The role of the ICC is justice, not peace or humanitarian action. The "purpose of judicial action is to adjudicate, not to honour memory or to prevent war or even, to resolve conflict".[1] I have witnessed the reality of this during my visits to the field, in the contacts I have had with people in Darfur, in eastern Congo or in northern Uganda. In these areas that have suffered unspeakable crimes, the population places all its hopes for recovering its dignity in justice. No one asks us for food or for help to return home. These people know full well what we can offer them and what falls outside our province. International justice does not serve History; it serves the present and the future, even though the output of this institution - like that of other judicial institutions - will serve as the basic matter for the writing of history, on the one hand, and the mould with which peoples will be able to create or recreate their collective memory, on the other hand.

In order to achieve such an ideal, an organisation with distinctive characteristics had to be created. It could not be a typical political or administrative organisation. An organisation was required that could support a court of justice capable of conducting fair trials and, thus, to establish a narrative of the facts to be adjudicated, a court that could be understood by the local population, by victims, by the world … in short, an organisation that would allow a court to administer quality justice.

That is the vision which has guided us since 2002.

We have faced numerous challenges. Some, the challenges of time, of space, of symbolism or of integrity, are similar to those faced by any national judicial institution, although because of its international nature, the ICC has some features that no other court has. A further challenge, unique to this institution, is that of diversity.

These challenges are the focus of these all-too-brief thoughts that I wanted to put on paper as I leave the Court.

I. The ICC and four of the classic challenges facing judicial institutions

1. The challenge of time

How can such an institution be built, while simultaneously investigating, judging, protecting victims, translating, developing computer networks, sensitizing the people, and doing all of this in an occasionally hostile environment at a time when the ICC had not yet gained recognition, let alone universal recognition?

When the ICC came into being in late 2002, we had no road map to guide us, no user manual and - unlike the other international tribunals which

1. Antoine Garapon, *Des crimes qu'on ne peut ni punir ni pardonner*, Odile Jacob, 2002, p. 277.

were based on the UN infrastructure that preceded them - we had no supporting institution. Like other UN creations, the international criminal tribunals are agencies of the United Nations. In our case, only three instruments were at our disposal: the Statute, the Rules of Procedure and Evidence and the Financial Regulations and Rules, which clearly did not dwell on the actual implementation of this magnificent idea of a universal criminal court. At the same time, there was a need to manage the very high expectations of States, NGOs, the media as well as those of communities affected by some of the most serious crimes, who were hoping this institution would hit the road running: "Why hasn't an arrest warrant been issued when we have collected the evidence? It is yet another example of the glacial pace of international courts!"

We rolled up our sleeves; we performed every task. During the first three years, the same people managed the short-, intermediate and long-term. Just as we were bolting something down, we had to make decisions with long-term consequences.

For example, in late 2002 and early 2003, we needed to hire the first members of staff, even though there weren't enough of us to sit on the interview panels; we had to make arrangements for the arrival of the judges and the prosecutor, scheduled for March 2003; we had to make decisions that would commit the future of this institution, but which could not wait for the arrival of the judges, the prosecutor or the registrar.

Beyond that, and more fundamentally, time has an additional dimension and is of utmost importance in the judicial context.

Judging is closely linked to time. The ICC is caught in a double bind between its internal clock, mainly dictated by the judicial process (from investigations to the appellate decision), and the time-frame imposed from the outside, such as the time-frame of the international community or the time-frame of the countries in which the Court intervenes.

This issue is not well understood - and, I would venture to admit - we have not communicated very well in this regard.

"The judge embodies continuity where power only cares for the short-term. Indeed, the judge reminds us that there are principles which no people may alter without undermining the very foundation of its essence and that such principles must endure".[2] The judge is the guarantor of the long time-frame in the face of the necessarily shorter political time-frames. The judicial time-frame is also out of sync with the media time-frame, often subject to the tyranny of the now and the immediacy of the "breaking news".

In the halls of justice, the judge exercises his or her authority by controlling time. In particular, the court must offer the parties time to freely express themselves, whether in writing or orally. The time taken by the proceedings is fully allocated to them within the framework of the rules of procedure. This allocation of time avoids the domination of one of the parties by the other; it loosens the grip of coercion. It creates a forum for debate. It is up to the judge to manage time in the proceedings; this management of time translates into "an institutionalisation of caution, the creation of a truce, a time to reflect. Procedure gives doubt a chance".[3] Judging takes time.

It is this internal clock which must regulate a court's time. Take communications, for example. In my view, there are clearly identifiable moments in judicial communication conducted by judicial actors: when a judge, a prosecutor or a registrar is sworn into office, when a warrant of arrest is executed or when a judgment is enforced, when a hearing is held…. Each of these moments of judicial communication must be given proper attention. The rest of the time, communication may be conducted by the international organisation which supports the activities of the Court.

Clearly, it would be unrealistic to think that a court, particularly the ICC, could exist independently of media or political time. Justice cannot ignore media or political time. However, it would be dangerous for a judicial institution to be drawn into a time-frame that is not its own. If it did, it would lose its identity, and its purpose, which is precisely not to be bound by the time-frame which binds the rest of society. If courts "lose" their time, if they lose their bearings, the same will happen to all other time-frames and guideposts which characterise human society.

This tension between the internal clock and the externally imposed time-frame is an established fact. The trial of Slobodan Miloševic provides an interesting case in point. As a result of judicial time, it was possible for the International Criminal Tribunal for the former Yugoslavia (ICTY) to cause the Serbian authorities to hand over their former president to the tribunal. On the other hand, this judicial time did not allow the former president's trial to be concluded.

2. Marc-Olivier Paradis, *Marcel Gauchet: La genèse de la démocratie, Michalon*, 1996, p. 94.
3. François Ost, *Jupiter, Hercule, Hermès: trois modèles du juge, in La force du droit*, Esprit 1991, p. 271.

Beyond the financial costs, was his trial meaningless because it was not concluded? Was not the most important point that a former head of state was in jail, that he had to answer for his alleged criminal activities before a court, and that his prosecution was seen and heard in all of the cafés of Kosovo and Bosnia ...? Furthermore, with regard to the building of the Serbia of the 21st century, the real consequences of the Miloševic trial over time, and, I would add, its impact on good governance principles within the European Union, are difficult to assess at this stage. In other words, it is impossible to assess judicial consequences in the short run.

Those who create judicial institutions must therefore bear in mind that this temporal dimension is unavoidable. As such, I think it is impossible today to criticise the Extraordinary Chambers of the Courts of Cambodia for making additional budgetary requests. That the architects of this project are surprised by such a request reveals their dearth of knowledge of judicial culture.

There are certainly ways to shorten judicial time-frames. In this regard, the possibility of holding trials in absentia is certainly an option that needs to be explored beyond the a priori assumptions of certain jurists.

In short, the impact of the permanent nature of this Court should not be under-estimated. This characteristic fundamentally distinguishes this court from the international criminal tribunals, in which the effects of their transitory nature are all too visible. Today, the constraints of time imposed on these tribunals as a result of their completion strategies are unrelated to judicial time. They are dictated by political time. It is normal and healthy for a court to cease to function once it has exhausted its mandate. That seems to be the case, in my view, for the Special Court for Sierra Leone. After the Charles Taylor trial, only one arrest warrant will be outstanding. So, the criminals, identified as such by the prosecutor of that court, will almost all have been tried. That is not the same for the ICTY or for the International Criminal Tribunal for Rwanda. In the case of the ICTY, for example, we know that at least two persons considered by the prosecutor of that tribunal to be primarily responsible for the tragedies in the former Yugoslavia have yet to be arrested and brought before the tribunal. Shutting down these tribunals today may signal that judicial time has been sacrificed at the altar of political time. If that happens, the risk is that justice will be trumped by realpolitik.

Above all, permanency means reconciling with the long-term, which is judicial time.

It is likewise permanency which creates an institution, which will cause it to survive its creators, it is permanency which will allow it to rise above its creators to fulfil its destiny.

Finally, permanency alters the daily horizon of international justice. Warrants of arrest not executed today will be executed tomorrow. The more we wait, the more severe the consequences of waiting will become, for waiting is expensive, financially and politically. One day, there must be accountability to public opinion and in court.

2. The challenge of space

The judicial is characterised by space as much as by time.

In judicial matters, everything starts in the courtroom. The courtroom is the crucible in which the alchemy of justice takes place, the space in which catharsis may occur. Political space is itself much broader: it covers the entire community.

Regardless of the society, the first act of justice has always been to identify a place, to define an appropriate space in which justice may occur. Judicial space is a sacred space; as such, it defines the other space, that of the secular.

Impartiality requires setting a proper distance between actors in the judicial process and also between them and the public; accordingly, the courtroom has a clear layout with designated places for the different actors; most importantly, it is also divided in two by a symbolic barrier, or, as is the case at the ICC, by a sheet of glass. On the one side, there is public time and space. On the other side, there is the place of justice where judicial time reigns, disconnected from ordinary time, as we have just noted. In this space, everyone is assigned to their proper place. Also, this space is protected, it is where law is pronounced; it cannot be violated. In this space, all customary distinctions of rank are suspended; another order is substituted. In other words, judicial space contributes to recreating order in the wake of the chaos resulting from the crime that was committed.

The judges look out over the public space, the height of their vantage point evokes the relationship between them and heaven. There is a hierarchy within judicial space.

With reference to judicial space, I should also mention the possibility of holding hearings *in-situ*. While the Statute provides that the seat of the Court shall be established at The Hague, it also provides that "the Court may sit elsewhere,

whenever it considers it desirable". It should be noted that the Registry has conducted a feasibility study in this regard in the Lubanga case.

Each aspect affecting the outcome of such a project was addressed in detail, such as searching for adequate facilities, security issues, proximity to the communities concerned, the need to ensure broad media coverage for the trial, logistics, and even the every day impact on work at the seat of the Court. The proposal ultimately did not come to fruition, not because of the Court, but because the government of the country where the hearings were to have been conducted considered that the security risks involved were too high.

This work conducted by the Registry allowed us to demonstrate that the Court had made tremendous progress in five years because we were able, despite many constraints, to organise an operation of that scale. This then highlighted the need for an international court to sit outside of the countries where the events took place. We had observed this earlier when the Special Court for Sierra Leone asked to conduct the trial of Charles Taylor in The Netherlands. Justice is related to the proper distance which allows judges to decide, dispassionately and independently. Too close, and pressure upon judges, prosecutors, witnesses or victims may be too great; too far, and justice will be unable to properly understand the parameters of the trial.

It should also be remembered that the audience for this justice, more than in national court systems, is humankind. A crime against humanity, because it specifically affects this basic connection, or in the words of the preamble of the Statute, "this delicate mosaic", does not merely affect local populations but all of humankind. The ICC audience is not limited to the victims of the crimes prosecuted. It is much larger.

These very considerations should inform the decision concerning what is to become of the archives of the international tribunals and courts: should they be returned to the countries in which the crimes were committed, to the peoples who suffered physically, or, on the contrary, should they be maintained in a symbolic place representing this humankind, which was sought to be shattered?

Starting with this space that is the courtroom, the Court can reach out to other spaces.

The second essential place is where investigations, witness protection activities, information and outreach to local populations affected by the crimes are conducted. Working from The Hague, thousands of kilometres away, in places that may still be at war, has led us to create structures, outposts, based on local realities, very different from those encountered in The Netherlands. Although I believe they were created too late, these field offices of the Court are now well established. The concept has also been further refined. These outposts represent the Court in the field, they are the "face" of the Court.

However, it seems to me that we cannot leave it at that. The ICC must continue to develop its organisation. While it was necessary at the beginning to centralise decision-making and to set up control mechanisms from The Hague, we are now entering a new era which will no doubt see increased decentralisation of this institution, bringing to it greater flexibility and adaptability.

The organisational chart of the Registry has taken into account these spatial dimensions, particularly in creating a field operations section which is slated to expand within the framework of the reorganisation I mentioned earlier, a reorganisation that should affect the Registry's structure as well.

The difficulties we have encountered due to the lack of space within the temporary premises now occupied by the Court have not facilitated our work, despite the goodwill of the Host State. The fact that the services of the Court are now, and will remain, divided between several sites is far from optimal. This mistake should not be repeated in the permanent premises.

3. The challenge of the symbolic dimension

The symbolic value of justice is very high. It is undoubtedly the most valuable aspect for any society. A judicial institution cannot be managed on the basis of ordinary performance indicators. Certainly, they are needed; but it must be remembered that a hearing is far more than four hours of work, it is also an opportunity to recreate meaning in the world.

The constituent elements of this symbolic capital cover quite a range, from the colour of justice to its image.

From the very beginning, we selected dark blue as the colour of the Court. We did not opt for the light blue of the UN or for red, the colour of the imperium. We felt that the dark blue symbolises justice. The blue appeared on the first letterhead we approved in late 2002; it was later adopted by the judges when they decided on the colour of their robes. As for image, in selecting the architectural proposals for the permanent premises, it must be remembered that to enter a

courthouse is to enter a world that differs from what lies outside, it means changing our codes, remembering that there are principles which lie beyond politics, principles that have to do with the values of humankind, and that cannot be toyed with at the risk of destabilising humankind. Care must be taken to build a place of justice in which the alchemy discussed above can occur and in which members of the public from every continent can immediately identify it as a place where quality justice is administered at the conclusion of a fair trial. This impression must permeate the visitor and those involved in the administration of justice, even if unbeknownst to them.

On this basis also, the logo which was chosen in haste in the early days of the Court could be reconsidered. Crafted in haste on a table corner by the lawyers of the Office of the Legal Counsel of the United Nations, it was designed to symbolise a political process: the drafting of a treaty. The laurels which underscore the scales may refer to the UN or they may refer to the victor's wreath. Furthermore, the scales are merely one of the symbols of justice, known mostly in the Western world; in Africa, justice is often represented by a tree or by a straight staff. Does the current logo speak to the peoples with respect to whom the Court intervenes or to the world audience? I imagine that an international competition, organised, in co-operation with the judges of each continent and peoples and legal anthropologists, to decide on a symbol representing universal criminal jurisdiction, would be of great value.

4. The challenge of integrity

Justice is useful because it acts as a political counterweight, a "third power".[4] Philosophically, the judge represents authority and not power; he is the *auctoritas*,[5] not the *potestas*.

Authority provides the link to our roots, whereas power looks forward into the future. The integrity of this authority must be preserved because "power is based on rules [while] rules are based on authority".

It is primarily in its interaction with the outside that this integrity can be undermined because judicial debate must be transparent. It must adhere to the adversarial principle which underpins judicial impartiality and independence.

Regarding relations with States, the Assembly of States Parties (ASP) is a mechanism that ought to provide a forum for debate between politics and justice. If such a forum is not clearly defined, there is a risk that the necessary and inevitable debates between politics and justice will take place in the corridors. While negotiations and consensus are the normal, traditional approach in politics, this is not the case in a judicial setting.

The ASP was designed to function like the United Nations. In my view, it is not the ideal forum to ensure dialogue between States and a court of justice. Over and beyond the fact that this fundamental organisation has been in existence for more than 60 years, it must be noted that it was created and works to facilitate political debate. At the United Nations, decisions are taken by the General Assembly or the Security Council, and are then implemented by the United Nations Secretariat. Obviously, the Court cannot operate in a similar manner. The ASP cannot make decisions that would be implemented by the judges!

That said, respect for integrity does not mean that debate would be inappropriate. On the contrary, I believe that informal debate between the representatives of the Court and the representatives of the States should be encouraged. This is already the case for public information and outreach activities. There is no reason why key issues such as defence, prisons, and investigations, etc. may not be addressed in this manner. Another possibility would be to organise a genuine debate, also informal, between the Prosecutor and States on prosecutorial policy. Obviously, this cannot be allowed to undermine the independence of the Prosecutor, who acts on the basis of the Statute. But it would enable a genuinely substantive debate to take place.

Today, in the absence of discussions on judicial policies, this exchange takes place during budget debates. This means that ICC policy is decided in face-to-face meetings between the Registrar and representatives of ministries of finance and foreign affairs, for the most part. Discussions concerning the Court's policies should revolve around the strategic plan, not around the budget.

4. As Denis Salas puts it: "what is this new justice other than a third power, which, being outward-looking, binds all of democracy to fundamental principles and now circumscribes state power within a judicial framework?" *Le tiers pouvoir*, Hachette, 1998, p. 170.
5. This intangible concept whose virtue lay in increasing the value of any act to which it gave its imprimatur, over and beyond *potestas*, this inherent and unsubstantial power which is all that was available to lesser magistrates without *imperium*.
6. Antoine Garapon: *Le gardien des promesses - justice et démocratie*, Odile Jacob, 1996, p. 180.

It is therefore urgent to create a new framework for interaction and dialogue between the Court and States Parties so that the ASP can facilitate the functioning of the Court as a judicial institution.

I would now like to turn briefly to the budget debates, which are often an unpleasant experience for courts all over the world. Evidently, respect for integrity does not mean saying to the Court: "submit your budget and we'll approve it as it stands because you are independent". The price paid by citizens of the international community for an international court is not neutral. When a country contributes one euro to international justice, that euro can no longer go to eradicate hunger in the world, or improve its pension, health or educational system. It is therefore a democratic issue: choices must be made first and foremost by representatives of countries and civil society. In our view, the Conference of Chief Justices of Asia and the Pacific, which includes judges from widely disparate judicial systems, was referring to this when it made the following recommendation in its Beijing Statement[7]: "Where economic constraints make it difficult to allocate to the court system facilities and resources which judges consider adequate to enable them to perform their functions, the essential maintenance of the rule of law and the protection of human rights nevertheless require that the needs of the judiciary and the court system be accorded a high level of priority in the allocation of resources".[8]

It is common knowledge that the budget includes items that can have serious implications for the independence of those involved in trials. For the Prosecutor, for instance, one risk would be not to have the means to carry out the investigations he may consider necessary to fulfil the mission assigned to him by the Statute. The Presidency, too, might not be in a position to appoint the required number of judges to the Court. The Defence might have to do without the necessary travel to visit a client, etc.

To summarise, although this is somewhat of an exaggeration, if the budget of a peacekeeping mission is reduced, the mission would still try to attain some of its objectives by redefining its priorities. The organisation will bear the responsibility for this. But for a court, it is impossible, for example, not to try an accused person, to release him, or not provide for his defence because of lack of financial resources.

Nevertheless, I would like to emphasise that it is not feasible for States Parties to provide the Court with the budget it requests without exercising any control,[9] especially with regard to policies it might wish to pursue that have significant financial implications. The Court should therefore be in a position to be truly transparent[10] in its management; it should demonstrate its efficiency in its management systems. This is why, starting with the very first budget, we requested significant funds to acquire robust information technology systems. This is also why we sought to set up a mechanism for analysing the various stages of the judicial process. This is the Court Capacity Model which, after validation by experience, will ensure that costs can be forecast with greater accuracy. Lastly, this is also why the suggestion by the Committee on Budget and Finance that projects that may require expenditure over several years should be included in the budget, must be adopted.

We cannot close this discussion on budget transparency without referring to the Strategic Plan, which is an essential instrument in the interaction between the Court and States Parties in that it sets out the three main areas on which, in our view, the Court should focus its development over the next ten years. As already stated, important policy issues should be discussed with reference to the Strategic Plan. From the outset, we devoted considerable effort whenever possible to defining objectives common to all the organs and to working together to attain these objectives. While a lot still remains to be accomplished not only in terms of implementing the Strategic Plan, but also of fine-tuning it, it is remarkable that such a plan could have been launched during the very first years of the Court's existence. The Strategic Plan will remain an important tool for the Court both internally and in its relations with stakeholders, particularly States.

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7. 19 August 1995.
8. Para. 42. See also the *Basic Principles on the Independence of the Judiciary*, endorsed by the United Nations General Assembly on 29 November 1985 (A/RES/40/32), and which, on 13 December 1985, invited Governments to take them into account within the framework of their national legislation and practice (A/RES/40/146), esp. para. 7.
9. Since April 2003, an external audit body has been working at the Court.
10. The objective is to publish the Court's budget and its implementation on the website so that the public can monitor how public funds are used.
11. The term "judicial decision" obviously includes judgments (Pre-Trial, Trial and Appeals Chambers) and orders, but also all written or oral decisions issued in the course of proceedings, or decisions taken by the Prosecutor, such as decisions to prosecute or not to prosecute.

It is possible to assess the work of a court of justice while ensuring that its independence remains inviolate, even if it must be admitted that it is difficult to assess a public good, that is, a judicial decision,[11] which carries strong symbolic freight. Nevertheless, there does exist a judicial product that can therefore be identified and quantified.

We have also worked hand-in-hand with the Committee on Budget and Finance to establish the contingency fund. In my view, it is the symbol of the Court's independence. While in national courts, the large number of cases can provide some room for manoeuvre, this is not an option for international courts. The only way to guarantee the Court's independence was to establish the contingency fund.

To move on, at least for the time being, from the budget, the Court should not be placed in a position of supplicant for contributions due from States Parties.[12] This would undoubtedly place it in a position of dependence. This is not the case today. Since 2002, the ICC has received on average more than 99 per cent of contributions from States Parties. This reflects the firm intention on the part of the States Parties to provide the Court with the wherewithal to fully accomplish its mission.

Finally, in respect of the relationship between the Court and States Parties, let me say two words regarding co-operation. A lot has been said and written on this point over the past two years. It is thus pointless to repeat it all, except perhaps for a few points.

Co-operation, firstly, is quite a big word for very mundane realities. Co-operation is about helping the ICC by supplying it with information, the means of transport, support in its witness protection programme, etc.

Next, on reflection, it is unfortunate that the execution of warrants of arrest, that is to say, the surrender of persons to the Court is found in Part IX of the Statute, which governs international co-operation. It should have been included in the part entitled 'Enforcement'. This refers to the enforcement of a court decision, which cannot be subjected to any negotiation whatsoever. Imagine the scandal that would be caused in a democratic country if a court order were not enforced by the police!
The enforcement of the decisions of a judge is a principle of democracy. If it is not done, the risk is anarchy; the law of might makes right. As the French philosopher, Blaise Pascal, noted "[j]ustice without might is helpless; might without justice is tyrannical".

Be that as it may, we certainly understand the legitimate questions raised by those who must enforce decisions, seeking a balance between peace and justice. I am fundamentally persuaded that there is a dearth of theoretical reflection.

Shouldn't we, for example, ask ourselves whether can we speak of peace for crimes that fall under the jurisdiction of the ICC? Aren't we confusing two different concepts: reconciliation and peace? If peace could in fact lead to negotiation between sides that have fought each other, how could one make peace with those against whom one had never made war? How can one make peace between Miloševic and the women of Srebrenica? As the widow of Serge Blisko said in South Africa: "We want reconciliation, but with justice".

We must also ask ourselves why these populations seek peace and not justice. One plausible hypothesis is that they have never known justice or even no longer believe in it, having been deprived of it for so long.

We likewise are obliged to point out, for the purpose of adding to the debate, that it was the legitimate governments in power in three of the four situations that have been referred to the Court, and the UN Security Council for the remaining situation, who, by their referrals, made the choice. It was not the Prosecutor. These political bodies referred these cases to the Court, knowing full well that they also needed to work for peace.

There again, justice needs to remain in its place. The function of justice is not to rebuild the social or political fabric which has been torn or even destroyed by the gravity of these crimes which go to the very heart of what it means to live together. The intervention of justice, alongside other forms of intervention, only serves to create the conditions for political reconciliation and reconstruction. Justice reminds us, for example, that the preservation of human dignity is not merely beneficial for the victim, but that it is the essential condition of the political bond.

The terms of the debate also need to be clarified with respect to NGOs. Indeed, the dialogue upon which we embarked with NGOs from the early days of the ICC has allowed us to start implementing new working methods which are no longer based on lobbying or negotiation. We

12. Antonio Cassese, *International Criminal Law*, Oxford University Press, 2003, p. 346.

needed to institute a dialogue with the NGOs, because they played an essential role in the birth of the Court, a birth that was a political process. There was a risk that the current mode of functioning would continue this dynamic. We thus created a time for regular discussions (twice per year) and the practice of meeting during the Assembly of States Parties.

We have, for example, been able to clarify the respective roles of the ICC and the NGOs in our communications regarding the Court and especially with regard to information and outreach activities.[13]

This dialogue, in my view, was essential for the purpose of clarifying each party's role. It will not be enough. Legal proceedings in the courtroom will also, and have already, allowed NGOs to progressively enhance their understanding of the limits of their role and their interventions. Confusing roles and responsibilities must be avoided.

II. The ICC and the new challenge of diversity

This is an essential challenge, with multiple facets. As UNESCO recently reminded us, cultural diversity is a source of dialogue and development.

The Court is first and foremost a community of women and men. They are its only wealth. They have different nationalities (79) and career horizons that are quite diverse. They belong to different cultures, have different beliefs, perceptions and values, especially with regard to international criminal justice. How can we help them to understand one another, to feel that they are valued, that their experiences are taken into consideration even if they are profoundly challenged in light of the complex realities that we have to face every single day? Basically, that they can work together in pursuit of a common goal: the quality of justice.

We need to create a common culture which allows these women and men to understand and appreciate each other with a view to creating true teams. That is one of the objectives of the Strategic Plan. We have already done this in training sessions and in developing the performance appraisal system and core competencies of the ICC.

This common culture cannot be the sum of the cultures of the various staff members. Rather, it is a *sui generis* creation, as in culture one plus one does not equal two.

Some things are needed for a common culture at the ICC: valuing different cultures, respect, the ability to approach things with humility, operating the institution in a non-bureaucratic manner, the principle of an organisation which works together as 'one Court', respect for ethical principles, the perception that bilingualism is a source of strength … and, above all, judicial principles.

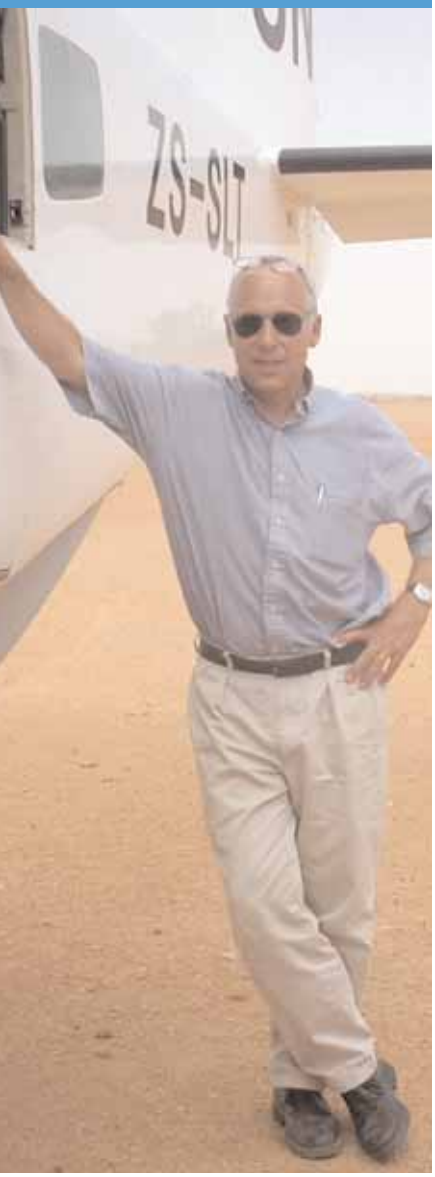
I under-estimated the dearth of judicial culture and knowledge of the basic concepts of justice among the professionals we hired. I fundamentally misconstrued things, thinking that staff members came to work at the Court, whereas they were coming to practise their profession.

In reality, it is not easy to understand judicial culture. This experience shows that the greatest problem is not the gap that lies between those raised on a diet of the common law and those raised on a diet of civil law. In both legal traditions, there are common elements of judicial culture that are difficult to comprehend for those not familiar with judicial institutions.

As my first example, let me mention that justice can disappoint its architects - it may acquit someone already considered guilty by the entire world, by the media, and even the victims. Justice lays neither obligation of guilt nor mantle of innocence on any accused or victim, for to do so would be particularly outrageous when we try persons who are themselves accused of transforming groups of people (e.g. Jews, Tutsis, etc.) into scapegoats. Law is law, and it is not necessarily a moral exercise.

As my second example, let us take the issue of victims. We often hear: "this Court was created for the victims". That comment, which seems to be underpinned by common sense, embodies a real danger: recreating a confrontation between the victim and the accused, the *lex talionis* in a sense. One of civilisation's great achievements has been to create distance, to interpose a third party between the victim and the accused who lays charges in the name of society rather than for the purpose of any personal vendetta. A sentence should not be construed as reparation for a wrong; it is punishment for an offence. We must avoid turning back the clock, reinjecting emotion into judgments. Nevertheless, allowing victims to participate in proceedings constitutes a real step forward in international criminal justice, in that it offers victims the opportunity to understand what occurred and to obtain reparations.

13 See *Strategic Plan for Outreach of the International Criminal Court* on the Court's website at www.icc-cpi.int.



This overhauling still remains to be done in large measure and I am certain that the ICC is ready to face it, as the problems related to this deficit are all too visible on a daily basis.

The Registry is likewise organised around these judicial principles. In fact, the various mandates of the Registry could on occasion be perceived as being incompatible with one another. That is what led me to create a Division of Court Services, which supports the operations of the Court by servicing the various trial activities, and another which supports only certain participants in the proceedings: victims and counsel. That is also why the Registry must remain the neutral organ that is contemplated by the Statute. The fact that we are, and will remain, a small organisation in numerical terms requires us to enhance our efficiency and avoid duplication. For example, the Registry must support the Defence and the Prosecutor working in the same offices in the field or protect, in turn, their respective witnesses. In its first five years, the Registry has succeeded in occupying this delicate spot, as specifically recognised by an amendment of the Regulations of the Court (Regulation 24 *bis*).

That is also why we have, from the outset, attempted to organise the administration so as to guarantee that every means is made available to the judges, the Prosecutor, the defence and victims, in order to ensure a fair trial and a quality decision. That is what we have labelled 'judicial administration'. The Court's administration shares many points with governments or private companies; but it is in many ways different. In fact, as we have noted, a judicial decision has no market value and all actors in the judicial process at the ICC are independent. Judicial administration therefore requires first and foremost ongoing self-assessment of one's activities, followed by the implementation of a proper judicial management of the Court, and lastly, staff who understand that they are working in judicial time and space and integrate this understanding into their work on a daily basis.

The specificity of such a structure implies, in my view, that it would be exceedingly difficult to reproduce. That is why I believe that if new international tribunals were to be created, they should all be created within the administrative framework of the ICC.

Having a clearly universal international court implies not merely that many countries have acceded to the Statute, but also that the staff of the Court comes from different countries. In order to achieve this, we thought it was especially important to establish job interview panels comprising women and men of different origins. That said, the lead requirement for being hired in this institution remains competence. I am thus firmly opposed to having positions, at any level, reserved for particular nationalities. Such a principle would undermine the quest for excellence that the States Parties placed at the top of the list of criteria for hiring staff at the ICC.

Finally, we must mention the culture of the peoples who suffered the atrocities committed. We must ensure that our intervention does not create new traumas. Our hypothesis was, and remains, that anthropology is unquestionably a discipline that can help us to better understand the consequences of our action. Having said that, the universal claims of international criminal justice require us to bear clearly in mind all of its aspects that are intangible and constitute its very essence, and what may be understood differently from one culture to the next. When speaking of traditional justice, we must be very careful to not fall prey to judicial romanticism. Traditional mechanisms have been developed to manage ordinary conflicts, which should make it very difficult to extrapolate from them for the purpose of addressing extraordinary situations. Mass crimes, by their very nature, constitute a breakdown in a society's culture.

I am aware of the failings, the inaccuracies, and the approximations contained in these few lines. Many of these ideas should be further debated and amplified. My objective was that, while things were still fresh in my mind, to provide keys for decoding what we have accomplished during the first years of this tremendous institution.

In closing, let me emphasise that, after five and a half years in the service of the ICC, I am even more persuaded that globalisation may be regulated through law, that is, through norms that we establish within the framework of reasoned debate, rather than by military or economic might, and that this is a great democratic endeavour worthy of our dedication.

Bruno Cathala
ICC Registrar 2002 - 2008

Photos: Bruno Cathala: the many aspects of the various roles of the ICC Registrar both in the Field and at Headquarters throughout 2002 - 2008