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Judge Silvia Fernández de Gurmendi

President of the International Criminal Court

Remarks to the Assembly of States Parties in relation to

Cluster I: Increasing the efficiency of the criminal process

The Hague, 24 November 2015

Your Excellency, Ambassador Tsuji,
Your Excellency, Ambassador Infante,
Excellencies,
Ladies and gentlemen,

I am delighted to have this opportunity to address this special plenary session on the topic of increasing the efficiency and efficacy of court proceedings and to discuss the significant progress which has been made by the Court in this area.

I have repeatedly stated that my top priority as President is to deploy all my efforts to contribute to the sustainability of the Court by seeking to enhance its efficiency and effectiveness. One key aspect of the Court's sustainability is the quality of justice that the Court is able to dispense. It is essential that the Court addresses the perception that our proceedings are too lengthy and not as efficient and effective as they should be.

During the 25th Diplomatic Briefing earlier this year, at which many of you were present, I outlined Court wide efforts to improve our operations. I made a commitment to ensuring particular progress by the judges of the Court in relation to enhancing efficiency. I committed to continuing the work of the judges' Working Group on Lessons Learnt, although with important changes.

I have personally taken the helm of the Working Group on Lessons Learnt. The Working Group is composed of judges and tasked with considering reform proposals to improve the efficiency and efficacy of the criminal process. I made certain adjustments to the composition of the Working Group in order to ensure the engagement of a maximum number of judges. I appointed certain judges to act as focal points to co-ordinate the way forward in certain key areas. And I clarified the relationship between the Working Group and the Advisory Committee on Legal Texts in order to avoid any duplication of functions.

After all, as we pursue enhanced efficiency, the procedures that we use to do so should themselves be efficient.

The Working Group on Lessons Learnt has embraced a holistic approach. Rather than focusing on scattered amendments to the Rules of Procedure and Evidence which may or may not be adopted, and which are not sufficient to produce systemic change, the Working Group has pursued measures which could impact proceedings as a whole, seeking to identify best practices and greater harmonisation across Chambers and Divisions. The aim has been to diagnose practical problems and propose comprehensive remedies.

Of course, there will always be a role for amendments to the Rules of Procedure and Evidence, a matter that I will return to later. However, much more extensive and rapid progress can be achieved through a practice-based approach.

The holistic practice-based approach provides a model for the future pursuit of efficiency gains and offers enhanced opportunities for flexible and widespread progress

[Clusters A, B, C and E and the Pre-Trial Practice Manual]

Excellencies,
Ladies and gentlemen,

I want to begin by discussing progress achieved in addressing Clusters A, B, C and E that were among the nine issues identified by judges in 2012 as requiring their particular review. These clusters encompass a range of issues related to pre-trial, trial and appeals proceedings as well as common issues amongst them. This progress was described in a Progress Report circulated to the Study Group on Governance in October. I also want to touch upon the Pre-Trial Practice Manual, also circulated to the Study Group in October.

The Progress Report and Pre-Trial Practice Manual mark significant progress towards ensuring a full and timely revision of our proceedings. The Progress Report

addressed at least 11 out of the 24 issues outlined in the Roadmap in 2012 and effectively disposed of the issues identified in Clusters A, B and C of that Roadmap.

This progress is the result of concerted and tangible efforts by the judges of the Court to reform proceedings in the past year. It is also due in some part to the Nuremberg Retreat, held in June of this year, which allowed the judges to reflect, collectively and extensively, on opportunities to expedite judicial proceedings. I would further note that the success of the judicial retreat in Nuremberg, also reflects the earlier work completed in September 2014 at the Glion Retreat, organised by the Swiss government, which was a unique opportunity for a diverse range of contributors, including Court representatives, States Parties' representatives, NGOs and independent experts, to explore the theme of strengthening the Court's proceedings

[Pre-Trial Practice Manual]

A tangible example of such strengthening is the Pre-Trial Practice Manual, which has been published on the website of the Court.

It is important that I elaborate on the Pre-Trial Manual. The Manual reflects the agreement of judges on best practices and harmonisation. It is a concrete representation of the principle that important progress can be made using a practice-based approach. The Manual is a living document, which will be updated, integrated and amended as warranted. In the future, it will be expanded to become a Chambers Manual, covering all phases of the proceedings. Obviously, it is not a binding document, but it provides a framework for parties appearing before the Court, informing their expectations.

The Manual is the result of many years of pursuing enhanced efficiency in relation to confirmation of charges proceedings. You will recall that in 2014, the Working Group on Lessons Learnt was already reporting to you on practice-based developments in pre-trial proceedings. The judges of the Pre-Trial Division have treated each new confirmation hearing as an opportunity to learn and to question what might be done better next time. Many of the best practices and harmonisations

reflected in the Pre-Trial Manual reflect experiences in the *Ntaganda* and *Gbagbo* cases.

As a result of this continuous reflection, there were a number of areas in which the practice of the Pre-Trial Division was heading towards judicial convergence. The Pre-Trial Practice Manual consolidates and codifies such convergence.

Some of the best practices in the Manual aim to enhance efficiency by defining with greater clarity the scope of the work of a Pre-Trial Chamber. Other best practices seek to minimise the duration and complexity of the confirmation of charges proceedings. Others seek to minimise delays, both at the pre-trial level and later, such as by requiring the Prosecutor to be as trial ready as possible with the investigations completed by the time of confirmation hearing.

[Harmonisation across Pre-Trial and Trial]

Excellencies,
Ladies and gentlemen,

An underlying premise of the recent work of the Working Group on Lessons Learnt is that the consolidation of best practices must be a collective exercise. It cannot be undertaken by Chambers or Divisions individually.

The judges acknowledge the need for more harmonised and unified practices concerning certain technical aspects of proceedings which may be relevant at both the pre-trial and trial level. They have therefore established an internal working group in this regard.

I am pleased to inform you today that this internal working group has already produced two technical protocols or standard directions on issues which arise commonly in pre-trial proceedings. These are currently undergoing finalisation and, following their approval by the judges, they will be added to the Pre-Trial Practice Manual and made publicly available.

In addition, an Inter-Divisional Committee on Drafting Style has been established to explore greater standardisation in matters of drafting and style across chambers and

divisions. This Committee is finalising an ICC Chambers' Style Guide, which will be made publicly available.

You can therefore see that the Court is highly committed to further streamlining and harmonisation.

[Victims Participation]

I would also like to touch upon the progress which has been achieved in relation to the harmonisation of practice with respect to victims' applications for participation in the proceedings and the procedure for their admission.

The judges are currently considering proposals for a uniform system for processing and assessing victims' applications for participation. I will, of course, continue to keep the States Parties informed of the progress of the judges' work in considering these proposals.

In addition, the Appeals Chamber has also taken steps to minimise procedural delays and enhance efficiency in relation to the participation of victims in interlocutory appeals. This is a concrete example of the Court's willingness to reconsider jurisprudence which has not proven to be in the interests of justice or efficiency.

[Amendments to legal texts]

Excellencies,
Ladies and gentlemen,

The Court's focus on best practice does not mean that amendments to the Rules of Procedure and Evidence or other legal texts have been ignored. The adoption of amendments, as you are all more than aware, may be a complex and cumbersome process, but, in certain circumstances, it remains essential. For this reason, the avenue foreseen in article 51(3) of the Rome Statute for urgent amendments to the Rules of Procedure and Evidence must remain open to the Court.

The Advisory Committee on Legal Texts has recently reported to the Presidency on a proposed amendment to rule 165 of the Rules of Procedure and Evidence to permit a

reduced number of judges to hear article 70 offences at each of the pre-trial, trial and appeals stages.

I would emphasise that such amendment addresses a critical need, as the limited pool of available judges renders it impracticable that proceedings related to article 70 offences be conducted identically to those for article 5 crimes. The proposal now needs to be considered by a plenary of the judges.

The judges have also identified as an issue for consideration the possibility of amending the Regulations of the Court to reduce the time taken for Trial Chambers to render their verdict on guilt or innocence, under article 74 of the Rome Statute. Consideration is currently being given to whether deadlines for rendering such decision could be imposed on Trial Chambers.

The potential impact of any such amendment on the expediency of the Court's trial proceedings is significant. Once work has concluded, the judges will consider whether this possibility should be further pursued through the appropriate channels.

[Performance Indicators]

Finally, I would like to highlight another aspect of the Court's efforts to increase its efficiency this past year. During 2015 the Court has worked with the important assistance of the Open Society Justice Initiative to develop a methodological approach to the development of performance indicators for the Court's activities. A limited number of key issues were identified as critical to the assessment of the institution's overall performance, and a plan was developed for the initial collection of relevant data on the basis of which the Court will progressively develop specific targets against which performance can be measured.

The purpose of the new approach is to allow both the Court and its stakeholders to assess the progress made by the institution over time in terms of the efficiency, effectiveness, productivity and quality of its work.

The Court identified the following four key goals as critical to assessing the performance of the ICC as a whole:

1) The Court's proceedings are expeditious, fair and transparent at every stage;
2) The ICC's leadership and management are effective;
3) The ICC ensures adequate security for its work, including protection of those at risk from involvement with the Court; and
4) Victims have adequate access to the Court.

These high-level factors cannot be measured in the abstract. Instead, a number of key Court-wide and organ-specific activities need to be identified which contribute to the achievement of these goals.

In the Court's report to the Assembly this year you will see all this outlined in detail. Let me just underline at this point that the Court's performance indicator project is a work in progress; the report marks the starting point of this exercise and we will continue *de*fining and *re*fining our indicators in the coming months.

[Conclusion]

Excellencies,
Ladies and gentlemen,

As I conclude my remarks, I hope it is evident that I am not only pleased to present to you the progress achieved by the Court in the past year, but I am also equally enthusiastic in relation to all the initiatives that remain ongoing. Enhancing the Court's efficiency and effectiveness remains my top priority. Looking forward, I hope to be able to address you again next year with another list of tangible reforms and practice changes.

I would like also to thank you for all the support you provide to the Court.

I now look forward to answering your questions and engaging in further dialogue on these important matters.

Thank you very much.