



*Address to the Assembly of States Parties*

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*(English version)*

Mr. President, Excellencies,

It is my pleasure to address this 8<sup>th</sup> Session of the Assembly of States Parties. This is my first opportunity to address the ASP since my election in March to succeed Judge Philippe Kirsch as President of the Court. I would like to begin by thanking Judge Kirsch for his pioneering leadership through the establishment and early development of the Court.

You have all received our report on the activities of the Court, therefore, this morning I will only provide you with a short update on recent developments and present to you the priorities for my presidency.

Mr. President, Excellencies,

In six days time the Court's second trial will start and the date for the third has been set for 27 April 2010. In addition, last month, Pre-Trial Chamber I held a hearing on the confirmation of charges against Mr. Abu Garda, who is charged with three counts of war crimes related to an attack on African Union peacekeepers in Darfur, Sudan. On 5 November, the Prosecutor informed the Presidency that he would request authorization to open an investigation in the Republic of Kenya. This means that in total the Court is now dealing with 8 cases coming out of five situations.

The Court is only half-way through its first trial. It is still much too early to draw conclusions about judicial proceedings. Permit me, however, to make three general observations.

First, the extent of attention which must be given to the protection of **witnesses** is perhaps unprecedented for any court or tribunal. Of the 30 witnesses called so far in the Lubanga case, 22 testified in Court with some form of protective measures. In comparison, only 28% of witnesses at the International Criminal Tribunal for the Former Yugoslavia have required any protective measures. The in-court protective measures are only one aspect of the measures to safeguard victims and witnesses. There is also much work in the affected communities to ensure that victims and witnesses are not put at risk while also guaranteeing the rights of the accused to a fair, public trial.

Second, the Court is operating against a largely blank slate of **jurisprudence**. The Pre-Trial and Trial Chambers are routinely confronted with fundamental questions of interpretation of the Rome Statute, some of which concern completely new innovations in international law. In the past year, there were two inquiries into the admissibility of cases on the basis of the principle of complementarity – one in the case of Mr. Katanga and another in the situation in Uganda. The issues raised in these instances have been resolved ultimately by the Appeals Chamber. Bit by bit, the Rome Statute is being set

into practice. For example, if the Pre-Trial Chamber grants the Prosecutor's request to open an investigation in Kenya, it will mean that three of four triggering mechanisms foreseen in the statute will have been exercised: state referral. Security Council referral and *propriu motu*.

Third, the Court has dealt ably with the participation of **victims**. Despite the significant practical challenges this fundamental right afforded to victims pose, 102 victims have participated in the proceedings against Mr. Lubanga. 345 victims will participate, through two legal representatives, in the trial of Mr. Katanga and Mr. Ngudjolo Chui. This a significant achievement in the Court's young history.

Mr. President, Excellencies,

The biggest obstacle to the conduct of judicial proceedings remains the **lack of arrest and surrender** of suspects.

Warrants have been outstanding since 2005 for four LRA commanders for war crimes and crimes against humanity allegedly committed in Uganda. Bosco Ntaganda has been sought since 2006 for war crimes allegedly committed in the Democratic Republic of the Congo. Three suspects are at large in relation to the situation in Darfur, Sudan. It is the responsibility of States to arrest and surrender these persons in accordance with their

legal obligations. This also has resource implications. After all, if public money has been spent on preparing these cases, then that money is lost if no suspects appear before the Court.

Mr. President, Excellencies,

I would like to turn now to the priorities of my presidency. My three priorities for the Court are:

- first, to ensure respect for the judicial independence of the Court,
- second, to enhance the effectiveness of the Rome Statute system, and
- third, to continue to strive to be a model of public administration.

Mr. President,

The hallmark of the Court is its independent, judicial nature. The drafters of the Rome Statute took great care to exclude political considerations from the work of the judges. Once a situation comes before the Court, justice follows its course. The Prosecutor and judges cannot and will not take political considerations into account. Judges make judicial judgments on judicial facts. Those who wish to discuss political issues will need to do so in political forums. Those who wish to engage the judges should do so through judicial proceedings.

At the same time, this judicial institution operates within a political world. It depends on States and others not just for cooperation, but also to respect, to protect and to enhance its judicial independence. If there are misperceptions, all stakeholders - States, international organizations and civil society - should continue to promote awareness and understanding of the Court's purely judicial nature.

Mr. President, Excellencies,

The second priority of my presidency is to enhance the effectiveness of the Rome Statute system. The ICC is just one part of the system, but all other parts need to work for it to be effective. States, international organizations and civil society have been working for years to develop the system of international criminal justice. Their achievements have been remarkable, but it is not time to rest. This system can and must be further developed. The primary responsibility and leadership in this belongs to States, but the Court it is ready to contribute substantially to this process. This system of international criminal justice can be enhanced in three ways.

First, the system can be broadened through advancing **global ratification** of the Rome Statute. While recognizing that ratification of or accession to the Rome Statute is a sovereign decision of States, the Court can provide as much information as possible to

those considering ratification or accession. In this regard I feel a special responsibility for my region, Asia. Asia is an upcoming economic and political powerhouse and should have more than just 14 States Parties to the Rome Statute. For this reason, this fall I will undertake my second major trip to Asia this year, in order to keep deepening knowledge about the ICC.

Second, the system can be deepened through improving the ability and willingness of national jurisdictions to investigate and prosecute crimes. On issues of admissibility, the Court, and the Court only, will decide. It is a judicial decision. On positive complementarity, I welcome the Danish-South African initiative. The Court will, subject to the limitations of its resources and its mandate, explore ways to support this. After all, we should be working towards a world where all crimes are prosecuted domestically and the ICC becomes a court held in reserve.

Third, the system can be strengthened through improving **cooperation**, in particular the enforcement by States of decisions and orders of the Court. The Court is ready to work with States to identify means and methods of enhancing the speed and reliability of cooperation.

I reiterate that the Court will do what it can in each of these three areas to strengthen the overall system of international criminal justice. But our actions are constrained by

proper requirements that we focus on our core judicial mandate and operate with limited resources.

The stock-taking exercise at next year's Review Conference offers a tremendous opportunity for all stakeholders to take a broad look at the larger system. This should be organized well in advance of the Review Conference. The stock-taking exercise and the Review Conference are, of course, primarily matters for States. Certainly the Court takes no position on the substantive legal proposals on the agenda at Kampala. When it comes to stock-taking, however, I can offer you the Court's partnership to the full extent possible.

It is my hope that the Review Conference will be attended at the highest level and be a unique opportunity to highlight the historic achievements of the Rome Statute System over the past seven years and to look at ways for all stakeholders to take this forward over the years to come.

Mr. President, Excellencies,

The third main priority of my Presidency is to ensure that the Court continues to strive to be a model of public administration, in accordance with the Court's strategic plan.



Efficiency is paramount in this regard. Court officials bear the heavy responsibility of ensuring that public funds are put to their proper use, with no tolerance for waste. This is a court-wide effort. I know there have been concerns about the roles of the various organs. The Presidency will present a report on this during the next CBF and I am confident that any outstanding issues will be resolved by then. Despite the increased judicial workload for next year, there is no significant budget increase next year. This means we are doing more with the same amounts of money. My Presidency is pleased that the CBF has endorsed the new staffing structure for the Judiciary, which will increase flexibility and make the best use of resources. Judges are keen to ensure cases go forward as fast as possible, not only to save resources but also to ensure that accused will not be held in detention longer than absolutely necessary.

We appreciate the cooperation with the CBF, which has meant that we were able to present a very lean budget in exchange for assurances of flexibility in case of unforeseen circumstances.

Being a model of public administration also means ensuring that the Court is representative of you, its States Parties. The Court is taking competence as the first criteria for selection in accordance with the Rome Statute. I am pleased with the progress the Court has made with regard to the other criteria, in particular the gender balance of Court staff, with 53% of posts now going to women, but I would like to see

more women in the higher positions as well. With regard to geographical balance, there is still room for improvement. The Court is mindful of the need to boost its staff percentages from underrepresented countries and regions. I would ask States for assistance in this regard. Today the different organs of the Court still receive a disproportionately high number of applications for staffing vacancies from applicants from the Western European and Others Group, over fifty-three percent. I would welcome measures by the ASP or individual States to encourage the submission of more applications from qualified persons in other regions.

Mr. President, Excellencies,

This year with the start of its first trial, the Court became a fully functioning judicial institution. It is no small achievement that a permanent mechanism of accountability for the most serious crimes of concern to humanity is now in operation. But the Court is still young and fragile. A multitude of internal and external challenges remain. As it faces these, the Court is grateful for the close relationship it is able to maintain with States through the ASP's Bureau and various working groups. The Session beginning today provides a key opportunity to chart a clear path toward the next major milestone in the development of the Rome Statute -- next year's Review Conference. I welcome the opportunity to continue our close collaboration. As partners, we can guide the Court and the entire Rome Statute system into a new stage of the fight against impunity. We

can consolidate our gains, refine our approaches, and extend our reach. If we do our jobs well, more victims of the worst of crimes will find justice within their reach. And the expectation of justice will contribute to the prevention of future crimes.

Thank you.