



Newsletter

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Editorial

The pace of Court judicial activity has increased with the Prosecutor's presentation of evidence to Pre-Trial Chamber I in the situation of Sudan. Following the UN Security Council's referral, the Office of the Prosecution has undertaken thorough investigations culminating in this month's application. In this context, special efforts were devoted to ensure the necessary protection measures for potential witnesses and victims.

In an effort to provide timely information on the filing of the OTP's application, a press conference held by the Prosecutor was organised in The Hague. Bearing in mind the particular interest of the Arab speaking public, the Court issued five information documents in French, English and Arabic. A live TV broadcast with simultaneous translation in Arabic was also transmitted and internet video-streaming was provided.

As part of the Court's commitment to provide a clearer understanding of its role, outreach activities are increasing. In the DRC, students, volunteers and humanitarian workers have been targeted this month and in Northern Uganda, civil society members among others, took part in activities organised by the Court as part of an attempt to meet the needs of those constituents at a grassroots level.

Bruno Cathala, Registrar

Pre-Trial Chamber I receives document containing evidence of crimes allegedly committed in Darfur

On 27 February, Pre-Trial Chamber I received an application from the Office of the Prosecutor containing evidence of crimes allegedly committed in Darfur and requesting the issuance of summonses to appear in respect of Mr Ahmad Muhammad Harun, former Minister of State for the Interior of the Government of Sudan, and Mr Ali Muhammad Ali Abd-Al-Rahman, alleged leader of the Militia/*Janjaweed* also known as Ali Kushayb.

The Prosecution's application states that, based on evidence collected during the last 20 months, there are reasonable grounds to believe that Mr Ahmad Harun and Mr Ali Kushayb, bear criminal responsibility in relation to 51 counts of crimes against humanity and war crimes. The Prosecution's evidence shows they acted together and with others, with the common purpose of carrying out attacks against civilian populations.

The crimes were allegedly committed during attacks on the villages and towns of Kodoom, Bindisi, Mukjar, and Arawala in West Darfur between August 2003 and March 2004. According to the Prosecution, the Office has focused on some of the most serious incidents and individuals, who according to the evidence, bear the greatest responsibility for those incidents.

In early 2003, Mr Ahmad Harun was appointed as head of the 'Darfur Security desk'. According to the Prosecution, the most prominent of his co-ordination tasks was his management of, and personal participation in, the recruitment, funding and arming of Militia/*Janjaweed* - forces that would ultimately number in the tens of thousands. The Prosecution also alleges that during a public meeting, Mr Ahmad Harun said that as the head of the 'Darfur Security desk', he had been given "all the power and authority to kill or forgive whoever in Darfur for the sake of peace and security."

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Facts regarding the situation in Darfur

31 March 2005 The United Nations Security Council (UNSC), acting under Chapter VII of the Charter of the UN, referred the situation in Darfur, Sudan since 1 July 2002 to the Prosecutor of the ICC in resolution 1593 (2005).

4 April 2005 The Prosecutor formally informed the President of the Court of the referral of the situation in Darfur.

5 April 2005 The Prosecutor received a sealed envelope which contained the conclusion of the UN Commission of Inquiry on Darfur¹.

7 April 2005 The Prosecutor opened a sealed list of individuals named by the UN International Commission of Inquiry as suspects of grave international crimes in Darfur.

21 April 2005 the Presidency of the ICC issued a decision assigning the situation in Darfur, to the Pre-Trial Chamber I (PTC I) composed of Judge Akua Kuenyehia (Ghana), Judge Claude Jorda (France) and Judge Sylvia Steiner (Brazil). (Document: ICC-02/05-1)

6 June 2005 The Prosecutor announced his decision to open an investigation into the situation in Darfur, since 1 July 2002. (Document: ICC-02/05-2)

29 June 2005 The Prosecutor submitted a first report to the UNSC pursuant to resolution 1593.

13 December 2005 The Prosecutor submitted a second report to the UNSC pursuant to resolution 1593.

14 June 2006 The Prosecutor submitted a third report to the UNSC pursuant to resolution 1593.

24 July 2006 PTC I invited Ms Louise Arbour, United Nations High Commissioner for Human Rights and Mr Antonio Cassese, Chairperson of the International Commission

of Inquiry on Darfur, Sudan, to submit in writing their observations on issues concerning the protection of victims and the preservation of evidence in Darfur; invited the Prosecutor and/or his representatives as well as the *ad hoc* Counsel for the Defence to provide a written response to the observations within 10 days; ordered the Registrar to appoint an *ad hoc* counsel to represent and protect the general interest of the Defence.

(Document: ICC-02/05-10)

25 August 2006 Mr Hadi Shalluf was appointed by the Registrar as *ad hoc* counsel to represent and protect the general interest of the Defence in the situation in Darfur, during the proceedings pursuant to rule 103. (Document: ICC-02/05-12)

25 August 2006 Mr Antonio Cassese submitted his observations. (Document: ICC-02/05-14)

11 September 2006 The Prosecutor responded to Mr Antonio Cassese's observations. (Document: ICC-02/05-16)

10 October 2006 Ms Louise Arbour submitted her observations. (Document: ICC-02/05-19)

13 October 2006 The *ad hoc* Counsel for the Defence filed '*Conclusions aux fins d'exception d'incompétence et d'irrecevabilité*' with the Registrar of the Court in which issues were raised related to the jurisdiction of the Court and the admissibility of the situation in Darfur. (Document: ICC-02/05-20)

19 October 2006 The Prosecutor responded to Ms Louise Arbour's observations. (Document: ICC-02/05-21)

22 November 2006 PTC I rejected the *ad hoc* Defence Counsel's '*Conclusions de la Défense*' noting *inter alia* that the Counsel had no procedural *locus standi* under article 19(2) of the Rome Statute to challenge the

jurisdiction of the Court and the admissibility of the situation in Darfur at the pre-trial stage of the investigation.

(Document: ICC-01/05-34)

14 December 2006 The Prosecutor submitted a fourth report to the UNSC pursuant to resolution 1593.

18 December 2006 The *ad hoc* Counsel for the Defence filed a request asking the Chamber to *inter alia* permit the presence and participation of the *ad hoc* Counsel for the Defence during the proceedings that the Office of the Prosecutor will undertake in Sudan. (Document: ICC-02/05-41)

2 February 2007 PTC I rejected the *ad hoc* Defence Counsel's request to be informed by the Prosecutor about any envisaged proceedings on to be invited to attend and participate in any proceedings related to the situation in Darfur which are carried out at the seat of the Court, outside it, as well as abroad. (Document: ICC-02/05-47)

1 The International Commission of Inquiry on Darfur was established in October 2004 by the United Nations Secretary-General, but acted independently. On 25 January 2005, the Commission reported to the UN that there was reason to believe that crimes against humanity and war crimes had been committed in Darfur and recommended that the situation be referred to the ICC.

Latest Public Legal Filings

For an update of all public legal filings relating to situations and cases before the Court, please consult the ICC website at:

www.icc-cpi.int/cases.html.

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According to the Prosecution, the conflict involved rebel attacks on Sudanese Government installations in Darfur and a counter-insurgency campaign by the Sudanese Government against the rebels. The Prosecution's application contains evidence showing that on several occasions Mr Ahmad Harun incited the Militia/*Janjaweed* to carry out such attacks. For example, in early August 2003, prior to an attack on Mukjar, Mr Ahmad Harun allegedly gave a speech where he stated

that, "since the children of the Fur had become rebels, all the Fur and what they had, had become booty" of the Militia/*Janjaweed*.

The application states that Mr Ali Kushayb, an "Aqid al Oqada" ("colonel of colonels") in West Darfur, was commanding thousands of Militia/*Janjaweed* by mid-2003 according to the evidence submitted. The Prosecution's evidence also states that Mr Ali Kushayb issued orders to the Militia/*Janjaweed* and armed forces to

victimise the civilian populations through mass rape and other sexual offences, killings, torture, inhumane acts, pillaging and looting of residences and market places, the displacement of the resident community and other alleged criminal acts.

The PTC I will review the evidence in order to determine if there are reasonable grounds to believe that the named individuals committed the crimes alleged and if so, will decide on the best manner to ensure their appearance in court.

The Office of the Prosecutor and its investigation in Darfur, Sudan

The investigation

In accordance with its duties under the Rome Statute, the Office of the Prosecutor has conducted an independent investigation, collecting since June 2005, statements and evidence during 70 missions in 17 countries. Reaching victims is a priority for the Office. It has screened hundreds of potential witnesses and taken more than 100 formal witness statements, many of which were from victims. The Office has also conducted five missions to Sudan and obtained information from a number of government officials. The participation of the Government of Sudan in the process has been important to ensure an impartial investigation. The Office has thoroughly examined incriminating and exonerating facts.

For the purposes of the application presented to the Pre-Trial Chamber I on 27 February, the Prosecutor has relied primarily on:

- 1) Statements from victims and other eye-witnesses to rebel attacks and attacks by Sudanese Armed Forces and the Militia/*Janjaweed* in the Darfur region;
- 2) Statements from individuals knowledgeable about activities of the Sudanese Government officials and the Militia/*Janjaweed* in conducting the counter-insurgency campaign in Darfur;
- 3) Documents and other information provided by the Sudanese Government;
- 4) The report by the UN International Commission on Inquiry (UNCOI) and other materials provided by the UNCOI;
- 5) The report by the Sudanese National Commission of Inquiry (NCOI) and other materials provided by the NCOI; and
- 6) Documents, reports, and statements provided by international and national non-governmental organisations.

The crimes alleged

The crimes alleged in the application were perpetrated in the context of a non-international armed conflict in the Darfur region between the Government of Sudan and rebel forces, including the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), from about August 2002.

A characteristic of the armed conflict in Darfur is that the majority of civilian deaths in the region have been caused



The Prosecutor at the Press Conference of 27 February 2007 © Reuters/Jerry Lampen

during attacks on towns and villages in Darfur carried out by the Militia/*Janjaweed* attacking either singularly or together with Sudanese Armed Forces. The vast majority of attacks carried out by the Sudanese Armed Forces and/or the Militia/*Janjaweed* in Darfur were directed at areas inhabited mainly by Fur, Masalit and Zaghawa tribes.

The Sudanese Armed Forces and the Militia/*Janjaweed* did not target any rebel presence within these villages. Rather, they attacked the villages based on the rationale that the tens of thousands of civilian residents living in and near the villages supported the rebel forces. This strategy became the justification for the mass murder, summary execution, mass rape, and other grave crimes against civilians who were known not to be participants in any armed conflict. The strategy also called for and achieved the forced displacement of entire villages and communities. As a result, hundreds of villages in Darfur have been pillaged and destroyed. Two million people are displaced from their homes.

The application alleges that Ahmad Harun and Ali Kushayb bear criminal responsibility in relation to 51 counts of war crimes and crimes against humanity including: rape; murder; persecution; torture; forcible transfer; destruction of property; pillaging; inhumane acts; outrage

upon personal dignity; attacks against the civilian population; and unlawful imprisonment or severe deprivation of liberty.

The named individuals

From April 2003 until September 2005, Ahmad Harun was Minister of State for the Interior and responsible for the 'Darfur Security desk'. The most prominent of the co-ordination tasks entrusted to Ahmad Harun in this capacity was his management of, and personal participation in, the recruitment of the Militia/*Janjaweed* to supplement the Sudanese Armed Forces. He recruited the Militia/*Janjaweed* with full knowledge that they, often in the course of joint attacks with forces of the Sudanese Army, would commit crimes against humanity and war crimes against the civilian population of Darfur.

Ahmad Harun was often physically present in Darfur to carry out his duties, visiting Darfur on a regular basis beginning in about April 2003. When describing Harun, witnesses immediately identified him as the official from Khartoum responsible for mobilising, funding, and/or arming the *Janjaweed* or *Fursan*. Witnesses also often stated that they saw Ahmad Harun meeting with or addressing leaders of the Militia/*Janjaweed*, including Ali Kushayb.

Ali Kushayb, was the "Aqid al Oqada", or "colonel of colonels," in the Wadi Salih

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locality of West Darfur. By mid-2003 he commanded thousands of Militia/*Janjaweed*. Ali Kushayb led the attacks on the villages of Kodoom, Bindisi, Mukjar, and Arawala and also mobilised, recruited, armed and provided supplies to the Militia/*Janjaweed* under his command.

The Prosecution alleges that Ahmad Harun and Ali Kushayb joined each other, and others, in pursuing the shared and illegal objective of persecuting and attacking civilian populations in Darfur.

Victims and witnesses

Under the Rome Statute, the Prosecutor and the Court are obligated to take measures to protect victims and witnesses. To uphold those duties to protect the well-being of victims and witnesses under article 68(1), the Prosecution determined not to go to Darfur to seek statements from victims.

Throughout the investigation the Prosecution monitored the security of victims and witnesses and implemented protective measures. The Prosecution and the Victims and Witnesses Unit of the Registry will continue to monitor and assess the risks to witnesses.

Admissibility

The ICC is a court of last resort, and may initiate cases only where: (i) there has not been any national investigation or prosecution of the case; or (ii) there is, or has been, such an investigation or prosecution, but the state is unwilling or unable genuinely to carry out the investigation or prosecution. In this context, a 'case' is defined by the specific incidents during which one or more crimes within the jurisdiction of the Court seem to have been committed by one or more identified individuals. For a case to be inadmissible, the national proceedings must encompass both the person and the conduct which is the subject of the case before the Court.

The Office has undertaken five missions to Sudan, most recently at the end of January 2007, gathering information on national proceedings from relevant government departments, including the judiciary, prosecution and police service. Having analysed all of the relevant information, the Prosecutor has concluded that the Sudanese authorities have not investigated or prosecuted the case which is the subject of



Geographical detail of the Darfur region of Sudan © ICC-CPI

the application.

On this basis, the Prosecution has concluded that the case is admissible. This

assessment is not a judgement on the Sudanese justice system as a whole. If an issue is raised regarding admissibility, the judges will make the final determination.

Key dates in the investigation of the Prosecution

31 March 2005: The Security Council adopts resolution 1593 referring the situation in Darfur, Sudan to the Prosecutor.

5 April 2005: OTP receives more than 2,500 items from the International Commission of Inquiry for Darfur; the Prosecutor received a sealed envelope from the Secretary-General containing the Commission's conclusions.

1 June 2005: Based on the OTP's analysis, the Prosecutor determines that there is "sufficient information to believe that there are cases that would be admissible in

relation to the Darfur situation".

1 June 2005: The Prosecutor opens an investigation into the situation in Darfur.

November 2005: First mission of the Office of the Prosecutor to Sudan.

February 2006: Second mission of the Office of the Prosecutor to Sudan.

June 2006: Third mission of the Office of the Prosecutor to Sudan.

August 2006: Fourth mission of the Office of the Prosecutor to Sudan.

January/February 2007: Fifth mission of the Office of the Prosecutor to Sudan.

Q and A on summons to appear

How can the Court ensure the appearance of a named individual?

Alternatively to seeking a warrant of arrest, the Prosecutor may submit an application to the Pre-Trial Chamber requesting it to issue a summons for the person to appear. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance, it shall issue the summons with or without conditions restricting liberty (other than detention) if provided for by national law, for the person to appear.

What shall the summons contain?

The summons shall contain:

- The name of the person and any other relevant identifying information;
- The specified date on which the person is to appear;
- A specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and
- A concise statement of the facts which are alleged to constitute the crime.

What conditions may the Pre-Trial Chamber impose in order to restrict the liberty of the summoned individuals?

In its decision the Pre-Trial Chamber may set one or more conditions restricting liberty in a manner that is in keeping with the national law of the country, including the following:

- a) The person must not travel beyond territorial limits set by the Pre-Trial Chamber without the explicit agreement of the Chamber;
- b) The person must not go to certain places or associate with certain persons as specified by the Pre-Trial Chamber;
- c) The person must not contact directly or indirectly victims or witnesses;
- d) The person must not engage in certain professional activities;
- e) The person must reside at a particular address as specified by the Pre-Trial Chamber;
- f) The person must respond when summoned by an authority or qualified person designated by the Pre-Trial Chamber;
- g) The person must post bond or provide real or personal security or surety for which the amount and the schedule and mode of payment shall be determined by the Pre-Trial Chamber;

The decision of Pre-Trial Chamber I is challenged by both parties

The Pre-Trial Chamber I (PTC I) confirmed charges of war crimes against Mr Lubanga Dyilo on 29 January. Mr Lubanga Dyilo is charged with enlisting and conscripting children under the age of fifteen years into the *Forces patriotiques pour la libération du Congo* and using them to participate actively in hostilities within the meaning of article 8(2)(b)(xxvi), in the context of an international armed conflict. Mr Lubanga Dyilo has been committed for trial in accordance with the Rome Statute.

The Defence has appealed the decision confirming the charges and both the Defence and the Prosecution have filed applications seeking leave to appeal.

On 30 January, the Defence appealed directly to the Appeals Chamber arguing that the decision denied the release of Mr Lubanga Dyilo. The Defence asked the Appeals Chamber to overturn the decision of PTC I and to grant unconditional release to Mr Lubanga.

Furthermore, the Defence also filed a confidential application for leave to appeal. On 22 February, the Defence filed a redacted version of its application following a PTC I decision to that effect.

On 5 February the Prosecution filed an application to PTC I requesting leave to appeal before the Appeals Chamber. The Prosecution argues that the Pre-Trial Chamber I has substituted the crimes charged by the Prosecution as enshrined in article 8-2-e-v-ii of the Rome Statute, with different ones under article 8-2-b-xxvii. According to the application, by proceeding in this way the PTC I has altered the characterisation of the charge.

Mr Lubanga Dyilo in Court © ICC-CPI/Hans Hordijk



Trial Chamber I constituted

On 6 March the Presidency issued its decision constituting Trial Chamber I in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, comprised of Judge Elizabeth Odio Benito (Costa Rica), Judge René Blattmann (Bolivia) and Judge Adrian Fulford (United Kingdom).

- h) The person must supply the Registrar with all identity documents, particularly his or her passport.

What if the summoned person fails to comply with the conditions set out by the Pre-Trial Chamber?

If the Pre-Trial Chamber is convinced that the person concerned has failed to comply with one or more of the obligations imposed, it may, on such basis issue a warrant of arrest in respect of the person.

If the Pre-Trial Chamber issues summons to appear, who shall be notified?

If a summons to appear is issued by the Pre-Trial Chamber, the relevant person shall be notified by way of personal service. The Registrar shall retain and if required,

produce proof that the document was effectively sent.

Following the issuance of a summons to appear, the Registrar shall transmit the request to the State concerned. If the summons includes conditions restricting liberty, the Registrar shall indicate in his request to the State concerned:

- a) That the national authorities are requested to inform the Registrar without delay of any problem that may impede or prevent the execution of the summons; and
- b) That the national authorities are requested to inform without delay the Registrar, who shall immediately inform the Pre-Trial Chamber of any failure by the person summoned to comply with the conditions imposed.

Students and general public targeted in the DRC

Students and the general public were the target groups for the Court's outreach activities conducted in February in the Democratic Republic of the Congo (DRC). In Kinshasa, 300 students participated in a seminar organised by the Court at the *l'Université Protestante du Congo*. The topic of the seminar was the decision rendered by the ICC Pre-Trial Chamber I to commit Mr Thomas Lubanga Dyilo for trial. Paul Madidi, Public Information and Outreach Officer in DRC introduced the subject and acted as moderator. Other participants were Professor Luzolo, an expert in criminal law, and Mr Franck Mulanda, one of the two councils representing the three victims in the case of *The Prosecutor v. Thomas Lubanga Dyilo*. The presentation was followed by a question and answer session. Among the topics discussed was criminal procedure as defined by the Rome Statute and those of Congolese legislation, as well as the rights of victims to participate in the ICC proceedings and to apply for reparations. Information materials were also distributed.

Volunteers and humanitarian workers are strategic targets of the Court's outreach programme because they are in permanent contact with affected communities in the Ituri province. In this context, the Court conducted two workshops aimed at

sensitising personnel at the Kinshasa office of the United Nations High Commissioner for Human Rights. The workshop entitled 'Understanding the ICC and its operation in DRC', took place on 6 and 16 February.

In co-operation with *Radio Okapi*, two one-hour special programmes based on the Court were broadcast on 14 and 19 February. The first one explained the right of victims to participate as independent parties in the proceedings, beyond giving testimony as witnesses; and the second one included the interactive participation of listeners, asking them to pose questions that ICC officials could respond to.

The association of community radios, *Centre Lokole*, invited ICC officials to participate in the programme "*Boyoka pe Biso*", broadcast in Lingala on 16 and 26 February. In this interactive programme, ICC officials answered questions raised by listeners, related to the judicial process in the case of Lubanga Dyilo.

The distribution of information materials and ICC selected legal texts collection continued throughout February. Materials were received by: *Bibliothèque Cepas*, *Bibliothèque du HCDH*, *Bibliothèque de*

l'Université protestante du Congo and *Bibliothèque du Ministère de la Justice*.

On 7 until 9 March 2007, the Registrar will visit the DRC. During his visit to Bunia he and Deputy Prosecutor Fatou Bensouda will meet with judicial representatives including the President and Prosecutor from the *Tribunal de grande instance*, as well as civil society representatives. On 9 March, the Registrar will participate in a live public debate on Interactive Radio for Justice in co-ordination with *La Radio Canal Révélation*. Other invitees to this event include both civilian and military judicial authorities, the political and administrative authorities, and representatives of the United Nations Mission in DRC (MONUC/Bunia). It is estimated that 200 people will participate in the meeting.

On the second leg of his mission, the Registrar will travel to Kinshasa. He will meet government representatives, the head of MONUC and representatives of other UN agencies as well as those NGOs, with which the Court works in close co-operation on the ground. Meetings between ICC officials and representatives of local NGOs and religious leaders are also scheduled for the third and fourth weeks of March in Bunia and Goma.

Informative workshops held in Northern Uganda

In February, outreach activities were conducted in the Teso, Acholi and Lango sub-regions, in North-eastern and Northern Uganda. Approximately 190 representatives, largely from civil society, participated in the workshops organised to increase the understanding of the role of the Court in the region. A consensus between participants was reached following further debate on the importance of strengthening local community participation in Court activities and future regular town hall meetings were agreed.

On 6 February a workshop was held in Soroti town for 73 clan leaders from the Amuria district. Concerns were raised regarding the role of the Court in ensuring secure measures related to the application of victims interested in participating in the proceedings. During group discussions, ICC officials explained that the Court is mindful of the risks that the process entails. The Court itself manages its contact with victims in a manner aimed at limiting any risk to victims or others, and

handles information received from victims with strict confidentiality. For instance, information on application forms submitted by victims is kept in a secure database to which only authorised staff at the Court has access.

A second workshop was held in Soroti town, on 7 February, with the participation of 46 representatives from the districts of Amuria, Katakwi and Soroti. As a way of promoting a greater understanding in their respective groups the participants recommended the promotion of filing victims' applications through the internet as a means of increasing confidence and stakeholder involvement in Court events. Collaboration arrangements and mechanisms of information sharing were also established as a result of the workshop, including recommendations to create information focal points within existing civil society networks that would enable increased access to ICC materials at a grassroots level.

One-day informative workshops were also held

in Gulu and Lira towns. The first took place on 21 February for civil society representatives from the Amuru and Gulu districts of Uganda's Acholi sub-region, and the other on 23 February in Lira town for the districts of Apac, Amolatar, Dokolo, Lira and Oyam in the Lango sub-region. Officials from the Registry and the Office of the Prosecutor met with the 75 representatives of local and international NGOs. They gave presentations on the Court's mandate, its on-going investigations in Northern Uganda, and victims' participation in the ICC proceedings. They also distributed information materials and listened to concerns presented by the participants. The ways and means of improving the dissemination of information about the Court were also discussed and agreed.

Another informative workshop is scheduled to take place in March in Adjumani town, in the Adjumani district. The workshop will bring together representatives from the Adjumani and Moyo districts of the West Nile region.

The appointment of the Trust Fund for Victims' Executive Director of the Secretariat begins a new operational phase

Mr André Laperrière joined the ICC Secretariat of the Trust Fund for Victims as the Executive Director on 31 January 2007. He is responsible for planning, managing and co-ordinating the work programme and priorities of the Secretariat, which has been created to provide such assistance as is necessary for the proper functioning of the Board of Directors in carrying out its tasks. The Secretariat aims to facilitate the work of the Board by implementing its decisions through its programmes and projects for the benefit of victims. Prior to working at the ICC, Mr Laperrière was the Director of the Administration and Finance Division of the World Health Organisation and before that, he worked extensively with different international institutions in countries such as Ethiopia, Haiti, Iraq and Guinea.

It is envisaged that Mr Laperrière's appointment and the re-election of the Board plus one new member, will allow the Trust Fund for Victims to enter a new operational phase. Established in 2002 by the Assembly of States Parties (ASP), the Trust Fund was set up to acknowledge the rights and needs of victims of crimes against humanity, war crimes and genocide, under the jurisdiction of the ICC. The Rome Statute provides for victims' active participation in the criminal process, and enables them to claim reparations from perpetrators. The Trust Fund, administered by the Registry, but independent from the Court, is supervised by the Board of Directors and complements the Court's reparations function. It is the Board who provide guidance on the Trust Fund's long-term strategy.

The Trust Fund's main resources are collected through fines, forfeiture and awards reparations ordered by the Court against convicted persons to provide compensation, restitution or rehabilitation. The judges determine the amount of a reparation order, but the Trust Fund plays an important role in the granting of reparations awards to victims in the case of collective awards or in cases where, at the time of making the order, it is 'impossible or impracticable' to make individual awards to each victim. In such cases, the Court may order that a reparations award is deposited with the Trust Fund for Victims. The Fund may also use the contributions to finance projects for the benefit of the victims. As

well as this, contributions are received from external sources such as governments, international organisations or individuals. It is anticipated that the new phase will enable new ways of fundraising to further boost the resources available to the Trust Fund to achieve its mandate.

The rules governing the Trust Fund for Victims set strict financial controls. The Fund is obliged to report annually to the ASP on all its activities, projects and offered voluntary contributions. Alongside these controls, the Committee on Budget and Finance is tasked with examining the Trust Fund's budget on a yearly basis and making recommendations as to its best possible financial arrangement.

At present, the Board is working to implement the Regulations of the Trust Fund adopted at the Fourth Session of the ASP related to the topic of whether the Trust Fund should be able to operate prior to a conviction. The Regulations state the Fund's first responsibility is to apply orders for reparations made by the Court against a convicted person. Therefore the Trust Fund must ensure that

resources are channelled to the benefit of those victims stipulated in the Court order. As well as this, the Board of Directors may use further resources to provide physical or psychological rehabilitation and/or material support for victims and their families. However, the Regulations also state that should the Board decide to do this, they must notify the Court of their proposals. The Court may then stall or stop the Trust Fund's decision if it believes that such actions might impact on the work of the Court.

Whilst providing justice to victims is an essential role of the Court, so too is giving them help and compensation to enable them to rebuild lives often shattered by conflict. The existence of the Trust Fund for Victims aims to help bring this goal closer to realisation.

Mr Laperrière (right) with members of the Board of Directors © ICC-CPI



Election of the Board of Directors for the Trust Fund for Victims

Subsequent to the resignation of Her Majesty Queen Rania Al-Abdulah in August 2006, the Assembly of States Parties at its Resumed Fifth Session in New York on 1 February 2007, elected Mr Bulgaa Altangerel of Mongolia to serve a three-year term as its Asian representative and fifth Board member of the Trust Fund for Victims. His election completes the independent body that supervises the Trust Fund created by the Court to provide help to victims and their families to enable them to rebuild their lives.

Prior to this event, three other members of the Board of Directors were re-elected after serving their respective three year terms. Their election came during the Fifth Session of the Assembly of States Parties (ASP),

held in The Hague from 23 November until 1 December 2006. The members, namely Madam Minister Simone Veil from France, who remains Chair of the Board, His Excellency Mr Tadeusz Mazowiecki from Poland, and His Grace Archbishop Emeritus Desmond Tutu from South Africa, will continue as representatives of their respective regions.

The member of the Board representing the Latin American and Caribbean Region (GRULAC), Mr Arthur Napoleon Raymond Robinson of Trinidad and Tobago, was elected by consensus on 16 May 2006, to fill the GRULAC vacancy following the resignation of his predecessor. Mr Robinson was also re-elected as a Board member at the ASP's Fifth Session in 2006.

The resumed fifth session of the Assembly of States Parties meets in NY



Mr. Bruno Stagno Ugarte (Costa Rica), President of the Assembly of States Parties, presides over the eighth plenary meeting
© ICC-CPI/ASP

The Assembly of States Parties held its resumed fifth session at the United Nations Headquarters in New York from 29 January to 1 February 2007.

Board of Directors of the Trust Fund for Victims

On 1 February, 2007, the Assembly proceeded to elect Mr Bulgaa Altangerel (Mongolia) as the fifth member of the Board of Directors of the Trust Fund for Victims. Mr Altangerel will join Mr Tadeusz Mazowiecki (Poland), Mr Arthur Robinson (Trinidad and Tobago), Archbishop Desmond Tutu (South Africa) and Ms Simone Veil (France), who were elected during the fifth session held in The Hague in November - December 2006. The Board members shall serve for a term of three years, which commenced on 1 December 2006.

Special Working Group on the Crime of Aggression

In accordance with article 5 of the Rome Statute, the International Criminal Court has jurisdiction over aggression, genocide, war crimes and crimes against humanity. Nonetheless, the Court shall exercise jurisdiction over the crime of aggression only once a provision is adopted defining

the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision should be consistent with the relevant provisions of the Charter of the United Nations. During its first session in 2002, the Assembly of States Parties established its Special Working Group on the Crime of Aggression. In accordance with resolution ICC-ASP/1/Res.1, the Special Working Group is open on an equal

footing to States Parties and non-States Parties.

During the resumed fifth session, the Working Group held six meetings and used as a basis for discussion a revised paper proposed by the Chairman of the Working Group, Ambassador Christian Wenaweser (Liechtenstein).¹ The discussions focused on the definition of the crime of aggression and the conditions for the exercise of jurisdiction by the Court. The Chairman indicated that the Working Group had entered a new phase in its work and that further discussions should be aimed at narrowing existing differences of opinion. The Working Group is endeavouring to conclude its work 12 months prior to the Review Conference foreseen in article 123 of the Rome Statute.

The Working Group considered whether the definition of the crime of aggression should contain a threshold clause stating that any act of aggression must constitute a 'manifest violation' of the Charter of the United Nations. In addition, the Working Group discussed whether reference should be made to the definition of aggression contained in resolution 3314 (XXIX), adopted by the United Nations General Assembly in 1974.

As regards the exercise of jurisdiction, divergent views were expressed as to whether the exercise of jurisdiction should require a prior determination of the State act of aggression by the Security Council,

Resolutions adopted

The Assembly adopted resolution ICC-ASP/5/Res.5 which amends the procedure for the nomination and election of judges in the event of a judicial vacancy. Accordingly, the Bureau shall fix the date and venue of the election, which should not be later than the 20 weeks after the occurrence of the vacancy unless the Bureau decides otherwise after consulting the Court.

As regards the judicial vacancy arising from the resignation of Judge Maureen Harding Clark (Ireland), the Assembly decided that the election would be held

during the sixth session of the Assembly, which is scheduled to take place in New York from 30 November to 14 December 2007. The Assembly fixed the nomination period to run from 1 June to 24 August.

Furthermore, the Assembly adopted resolution ICC-ASP/5/Res.6, amending the pension scheme regulations for judges (ICC-ASP/5/Res.3). The amendment precludes the possibility of individuals receiving a pension from the Court while serving as a judge at another international tribunal.



2007 inter-sessional meeting

Information on the 11 - 14 June 2007 inter-sessional meeting of the Special Working Group, to be held in Princeton, New Jersey, is available on the website of the Court (www.icc-cpi.int), under the section 'Assembly of States Parties/Crime of Aggression'.

Ambassador Christian Wenaweser, Chairman of the Special Working Group on the Crime of Aggression
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and on the consequences of the absence of such determination.

An informal inter-sessional meeting on the crime of aggression shall take place from 11 to 14 June 2007 at the Liechtenstein Institute on Self-Determination at Princeton University.

Official Records

The Official Records of the resumed fifth session, containing, *inter alia*, the report of the Special Working Group on the Crime of Aggression, as well as the resolutions adopted by the Assembly, are available on the website of the Court (www.icc-cpi.int).

Bureau of the Assembly

During the resumed fifth session, the Bureau held several meetings and decided, *inter alia*, to extend the mandate of its two Working Groups in The Hague and New York under the existing terms of reference.

The Working Group in The Hague will consider the following issues:

- engage with the Court on the implementation of the strategic planning process of the Court;
- equitable geographic representation and gender balance in the recruitment of staff members;
- permanent premises;
- engage with the Court on the issue of co-operation and then report to the Bureau who would decide how to further consider the issue; and,
- consider the issue of the budget of the Court, while respecting the special role of the Committee on Budget and Finance.

The Working Group in New York will consider the following issues:

- review the implementation of the plan of action of the Assembly of States Parties for achieving universality and full implementation of the Rome Statute;
- arrears, including suggestions to promote timely payment;
- engage with the Court on proposals for an independent oversight mechanism; and,
- preparations for the Review Conference, in particular as regards the applicable rules of procedure and practical and organisational issues.

The Bureau designated the following facilitators:

The Hague Working Group

- The strategic planning process - Ms Michèle Dubrocard (France)
- Equitable geographical representation and gender balance in the recruitment of staff - Ambassador Mirjam Blaak (Uganda)
- Permanent Premises - Mr Masud Husain (Canada)
- Proposed programme budget - Ambassador Hans Magnusson (Sweden)
- Co-operation (The Hague) - Ambassador Kirsten Biering (Denmark)

New York Working Group

- Co-operation (New York) - Ms Brechje Schwachöfer (Netherlands)
- Plan of action for the Assembly for achieving universality and full implementation of the Rome Statute - Mr Alejandro Alday (Mexico)

In addition, the Bureau appointed by consensus Mr Renan Villacis (Ecuador) as

Director of the Secretariat of the Assembly of States Parties.

The decisions of the Bureau are available on the website of the Court (www.icc-cpi.int).

The Hague Working Group

The Hague Working Group held its second meeting on 21 February, 2007 and discussed the issue of permanent premises and project governance structure. In this connection, the Working Group agreed to convene a meeting of experts on the issue of permanent premises at the end of March.

1 Document ICC-ASP/5/SWGCA/2.

The new director of the ASP Secretariat

Mr Renan Villacis (Ecuador) began his professional career as third secretary of the Ecuadorean Ministry for Foreign Affairs.

In 1996 he joined the Office of Legal Affairs of the United Nations Secretariat in New York. As a member of the Codification Division of that office he was part of the Secretariat team that provided substantive servicing to the Preparatory Committee for the establishment of an international criminal court, the Rome Diplomatic Conference, the Preparatory Commission for the Court and the first two sessions of the Assembly of States Parties.

In 2004, Mr Villacis became the legal officer of the Secretariat of the Assembly in The Hague and since April 2005 was the Director *ad interim* of the Secretariat.



Mr Renan Villacis © ICC-CPI/ASP

Universality of the Rome Statute: the role of the ICC

The States Parties to the Rome Statute have consistently stressed that the Statute should be accepted and applicable all over the world. "Universality of the Rome Statute of the International Criminal Court is imperative if we are to end impunity for the perpetrators of the most serious crimes of international concern, contribute to the prevention of such crimes, and guarantee lasting respect for and enforcement of international justice," declared the Assembly of States Parties (ASP) to the Rome Statute in 2006.

Since the Rome Statute was adopted in 1998, 104 States from all regions of the world have become Parties. The quick pace of ratifications has surprised many observers. Nonetheless, many States are not yet Parties, and the pace of ratifications has been uneven across regions. At present, Africa is the most-represented region among States Parties. Western Europe and Latin America and the Caribbean are also well-represented. Progress towards universal ratification has been slowest in Asia.

The primary responsibility for promoting the Rome Statute belongs to the States Parties. These States Parties have encouraged ratification by other States and have supported numerous initiatives aimed at promoting ratification. In 2006, the ASP adopted a plan of action for achieving universality and full implementation of the Rome Statute. This plan sets out how the ASP and its States Parties will each continue to contribute to achieving universality in the coming years. It calls on States Parties to proactively promote universality in their political and other contacts. These contacts include both bilateral relations with non-States Parties and interaction with regional groups or organisations. States Parties also convene or support conferences or other events aimed at promoting ratification. Another way in which States Parties support ratification is by providing technical or financial assistance to States wishing to become Parties. The Secretariat of the ASP supports these endeavours by acting as a focal point for the exchange of information.

International organisations have also actively promoted universal ratification of the Rome Statute. The UN General Assembly has called upon all States to consider ratifying the Rome Statute. The European Union has urged its Member States and other States to ratify the Statute and has supported several initiatives aimed at promoting universality. Similarly, the Organisation of American States and the

African Union each have sought to further universal adherence to the Rome Statute.

Many non-governmental organisations have been very active and have taken leading roles in promoting the universality of the Rome Statute through convening conferences, facilitating the exchange of information among their members and various forms of advocacy.

The role of the Court

The Court does not itself promote ratification as it is a sovereign decision to be taken by States. The Court is a judicial institution. It must adhere strictly to its judicial nature and is not a participant in political debates. Nevertheless, the Court contributes to others' efforts to achieve universality by providing information about the Court and its role to interested audiences.

According to the President of the Court, Judge Philippe Kirsch, often misperceptions or misunderstandings about the Court exist simply because of a lack of information. "My experience is the more people understand the Court, the more they are supportive [of the Court]," observes President Kirsch. Explaining the role of the Court in relation to efforts to promote universality, President Kirsch says, "The role of the Court is not to promote itself. Our obligation is to explain the Court and to provide accurate information about it." Visits by

the President or other Court officials to non-States Parties are an important means of providing information directly to government officials or parliamentarians responsible for deciding on ratification. On the invitation of government officials or parliamentarians, the President or other Court officials on his behalf have travelled to countries in all regions of the world to explain the Court and its role. In the past three months alone, President Kirsch has travelled to Japan and Guatemala on the invitation of the respective Ministries of Foreign Affairs, and to Turkey and Ukraine on the invitation of parliamentarians.

An example of the potential impact of such visits is provided by the ratification of Mexico. In describing the process of ratification in his country, Mexico's Deputy Permanent Representative informed the UN General Assembly, "I should like to pay special tribute to President Kirsch, who visited Mexico on a number of occasions in order to hold discussions with its Congress and who also received Mexican parliamentarians at The Hague. His confidence and his tireless efforts were crucial in overcoming last-minute resistance and in dispelling any remaining doubts."

As understanding of the Court continues to grow around the world, the number of ratifications is expected to increase.

The Registrar on mission in Uganda

As part of a commitment to maintain a regular dialogue with various stakeholders in the countries of situations under investigation, the Registrar, Mr Bruno Cathala, travelled to Kampala, Uganda, on 26 until 28 February.

The Registrar met with government representatives for updates on the measures taken by the Ugandan authorities in effecting the warrants of arrest delivered by Pre-Trial Chamber II in July 2005.

With a view to maintaining a regular dialogue with local actors, the Registrar met with the United Nations Development Programme representative, newly appointed as UN Resident Co-ordinator. Meetings were also held with the United Nations High Commissioner for Refugees, and representatives of other UN agencies.

Upcoming events

On 7 - 9 March, the Registrar will visit the DRC. He will meet with representatives of the judicial authorities, government, UN agencies, and civil society. The Registrar and Deputy Prosecutor will participate in a live interactive radio show.

On 26 - 27 March, the seventh strategic meeting between the Registry and NGOs will take place in The Hague. The Office of the Prosecutor will also host a meeting with the NGOs on 28 - 29 March.

The first of the regular ICC diplomatic briefings for 2007 will take place 29 March, in The Hague.

On 28 - 29 March a seminar on counsel will take place at the World Forum Convention Center in The Hague.

An experts meeting on permanent premises is scheduled for 28, 29 and 30 March.