



Human Rights Watch Statement at the Fifth Session of the Assembly of States Parties

November 24, 2006

Human Rights Watch welcomes the Fifth Session of the Assembly of States Parties (ASP) of the International Criminal Court (ICC) and we are grateful for the opportunity to make these remarks.

We believe this session of the ASP has the potential to be an important milestone in the evolution of the ICC and its assembly. I want to acknowledge the significance of the important developments over the last year. We see the hearing on confirmation of charges against Mr. Thomas Lubanga, the opening of the New York Liaison Office, the new court wide plan on outreach and communications and the Strategic Plan as important in the context of this unprecedented institution becoming operational. There are many issues that are worth discussing but because time is limited, I will touch on three specific points and begin by highlighting a key lesson this court, we believe, needs to draw from the experience of the ad hoc tribunals.

I. Maximizing the ICC's Impact with Affected Communities

The burdens on this court are enormous. It must carry out efficient investigations in areas of ongoing armed conflict and conduct fair trials hundreds, if not thousands, of miles from where the crimes occurred. As the world's principal criminal justice institution, efficient investigations and fair trials are at the core of the court's work and the yardstick by which its performance will be evaluated. However, these activities by themselves will not be enough for the ICC to succeed.

As an international court, seated far from the communities where the crimes occurred, the ICC runs the risk of being perceived as irrelevant by the very people it was created to serve most directly. Unlike national courts the court has no deep-rooted legitimacy in the situation countries where it is investigating and while it may be welcomed by the victim community, it will be viewed with suspicion, if not hostility, by those who fear its work. Moreover, the ICC is working on behalf of several diverse stakeholders

simultaneously. While the international community is one of those stakeholders, the local population in the situation countries is another crucial constituency, one that the ad hoc tribunals overlooked. Outreach at ad hoc tribunals was not pursued until years after their establishment. While the communities most affected by the crimes may be difficult to reach, this court **cannot** afford to neglect them. This is why it is so important that the court and the assembly are grappling with outreach and communication, in situ proceedings, and victim participation. The assembly must give the court the resources it needs to conduct this work through adequate budgetary provisions for these areas.

Making the ICC's proceedings meaningful to affected communities is essential as well in helping strengthen respect for the rule of law in situation countries and building the court's deterrent effect. Those are fundamental aspects of the mandate of the ICC as embodied in the Rome Statute. The fact that the court will likely conduct only a limited number of trials in each situation makes such efforts all the more important.

II. Engaging in Substantive Discussion and the Strategic Plan

My second point is that this ASP offers, as we have been hearing this morning, the opportunity for states parties to discuss substantive aspects of ICC policy and practice as part of the assembly session. While scrupulously respecting the court's independence as a judicial institution, we believe it is important states parties use this opportunity thoughtfully.

We believe this dialogue on substantive issues of policy is crucial for both the court and the ASP. The process will enable states parties to increase their understanding of the court's work and challenges. Concretely, this is a chance, with all states parties present, for a ***principled and transparent*** exchange of views on the important issues of court policy that are important to the court and governments.

We believe the dialogue on the Strategic Plan offers an excellent opportunity, along with this important general debate, for delegations to make known their views about the work of the court in broad terms, including vital aspects that will be crucial to enhancing the court's relation with affected communities. These aspects include:

- victims' participation and reparations;
- field activities in the situations under investigation;
- outreach and communications with local populations; and
- the implementation of positive complementarity to promote national accountability efforts.

In this context the court's Strategic Plan takes on particular significance. The plan is an important initiative. It allows the court to articulate its vision of its mandate and to identify objectives and concrete strategies to achieve its goals.

We welcome the plan and appreciate the hard work and long hours court officials have put into it. We welcome the prosecutor's formulation of a strategic plan for his office, dissemination of a paper on prosecutorial strategy and the convening of meetings to discuss these. We hope that important dialogue will continue on these issues.

The revised version of the court wide plan shows increased attention to the importance of reaching local populations in situation countries. Nevertheless, we believe the plan continues to lack some critical elements and we see it as a work in progress. It does not reflect a comprehensive vision or strategies to make the ICC's work meaningful to these populations. This ASP session is the moment to discuss the revised plan the court has formulated and to suggest steps to promote further improvements.

We urge states parties to participate in the session on the Strategic Plan and we believe it's crucial that the resolution on the Strategic Plan includes:

- A call for The Hague Working Group's sub-group to remain seized of the matter and for the ICC to continue to consult the sub-group and civil society about the plan;
- A request that the ICC utilize its report on activities to the 6th ASP session to describe the plan's implementation.

III. Uganda, Peace and Justice

I want to conclude by touching on an issue that is not formally before this ASP but that has enormous implications for the success of the court and crystallizes some of the challenges faced by ICC: that is the interface of peace and justice as manifested in the peace talks for northern Uganda.

We welcome the observation expressed several times during the general debate – that peace and justice are complementary. The peace talks between the government of Uganda and the LRA hold promise for ending the 20-year conflict which has been devastating for the people of the north. And prosecutions for the most serious crimes are an essential component to building a durable peace. As Kofi Annan has said, "justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives." Justice, through fair and credible trials, must be part of any outcome emanating from the talks in Juba.

This why we urge states parties to work for an outcome which includes both a peace agreement and fair prosecutions. Let me be clear: It's not only that fair trials are mandated by international legal instruments, as important as those are, including, obviously, the Rome Statute. Upholding legal commitments to prosecute has significant positive practical implications. It consolidates the rule of law by sending the message that people in a society are treated equally. This, in turn, solidifies society's confidence in institutions, which cements peace and stability.

Thus, we believe, states parties should also make clear that, if the situation arises, a Security Council deferral under article 16 of the Rome Statute would be inappropriate in this instance and states parties on the Security Council have a particular role to play in opposing an article 16 deferral. A deferral on these facts could open the door to dangerous and inappropriate interference by the Security Council in the ICC. We have already seen unprincipled use of the Security Council by one permanent member to pursue unlawful interference through Security Council resolutions 1422 and 1487.

Some have suggested that traditional justice measures should be utilized as an alternative to the ICC. Such traditional justice measures may have an important role to play in a comprehensive approach to accountability and community healing. But while the precise way in which these measures might be applied is not yet clear, they are unlikely to provide effective prosecution accompanied by fair trial guarantees – such as the right to a fair and public hearing by an independent and impartial tribunal and the presumption of innocence – which is required under international law for cases involving serious crimes.

In conclusion, there are many challenges ahead and the work of this ASP can make a difference in enabling its court to meet them and to bring justice to those looking to the ICC for redress. This will advance the struggle against the crimes that shock the conscience of humankind.