

INSIGHT

on the
International Criminal Court



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Six ICC Judges Elected: One Newcomer

By Cecilia Nilsson Kleffner

On 26 January 2006, the Assembly of States Parties to the Rome Statute of the ICC (ASP) elected six of the 18 judges of the ICC, who will serve full terms of nine years. Five judges have been re-elected: Hans-Peter Kaul (Germany), Erkki Kourula (Finland), Akua Kuenyehia (Ghana), Sang-Hyun Song (Republic of Korea) and Anita Ušacka (Latvia). New to the bench is Ekaterina Trendafilova from Bulgaria. She will replace Tuiloma Neroni Slade from Samoa who has served as the President of Pre-Trial Chamber II, the chamber which was assigned the situation in Uganda in July 2004. Commenting on the change brought about by the election, CICC

Convenor William Pace said: "Many NGOs attending the ASP noted the important contributions made by Judge Slade to the Court over the past three years."

Judge Trendafilova will not automatically replace Judge Slade as Presiding Judge of Pre-Trial Chamber II. After the inauguration on 11 March 2006, the Judges will meet in plenary to be assigned to divisions according to the specific role of the division and their qualifications. They will also elect a President and two Vice Presidents for a period of three years.

These elections were unique in that for the

first time acting ICC judges were running for re-election. Of the ten candidates, six were ICC judges who had initially been given a three-year term and who were given the opportunity for re-election for another nine years. The remaining

covering a wide range of justice issues which were filled out by nine of the ten candidates and can be found on the CICC website.

Prior to the elections, the Coalition also urged all States Parties to participate in the elections and reminded them that the decisions of governments to support certain candidates should be based on the highest principles, including qualifications, expertise and balanced representation of different legal systems, regions and gender. The Coalition also cautioned that governments should refrain from making reciprocal agreements that undermine the integrity of the election process and ultimately the credibility of the



The results of the ICC Judges election of 26 January 2006: (l-r, top row) Akua Kuenyehia (Ghana), Hans-Peter Kaul (Germany), Erkki Kourula (Finland); (l-r, bottom row) Sang-Hyun Song (Republic of Korea), Ekaterina Trendafilova (Bulgaria) and Anita Ušacka (Latvia). ●

12 Judges, serving for six and nine years, will not be given this opportunity. In addition to the six serving judges, the candidates that had been nominated, apart from elected Judge Trendafilova, were Károly Bard (Hungary), Haridiata Dakoure (Burkina Faso) and Cheikh Tidiane Thiam (Senegal).

All candidates were invited by the Coalition, together with the Women's Initiatives for Gender Justice, to participate in a panel on 24 and 25 January 2006 in New York. These panels gave the Assembly delegates, as well as civil society, the chance to hear the candidates' views regarding their candidacy, the ICC and justice issues in general. All of candidates except Mr. Bard and Mr. Thiam participated in one of the two panels which were organised primarily to help inform the election decisions of States Parties and to keep the election process as transparent as possible. The Coalition had also provided the candidates with questionnaires

International Criminal Court.

All 100 States Parties were present and voting. Shortly before the session started, there were concerns regarding the 17 States Parties that would not be able to vote due to the failure to pay their contributions. However, all these States were granted exemption by the Assembly and were consequently allowed to vote in the elections. ●

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As of 15 February 2006

The Rome Statute of the ICC has 100 ratifications & 139 signatories

The Agreement on Privileges and Immunities of the Court has 35 ratifications and 62 signatures.

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The Assembly Meets:

States Parties Show Increased Commitment

The Fourth Session of the Assembly of States Parties (ASP) witnessed an increased readiness on the part of States Parties to engage in matters beyond the Court's most urgent operational issues, to think in a more long-term way about challenges ahead and to accept a greater level of responsibility for assisting with increased ratification and implementation of the Rome Statute around the world. This was a welcome change from past sessions where the lack of time and priorities, as well as uncertainties about the ASP mandate, had been used as justification for not fulfilling these important responsibilities.

As part of this optimistic new trend, the incoming ASP President and the new ASP Bureau agreed to find time in the agenda for general statements, giving states the opportunity to put forward their views and concerns about the ICC and the Rome Statute system. These declarations elevated the debate at the ASP and provided the Court and the Assembly with guidance about the Court's general direction and also set the framework for future discussions about items on the Court's agenda.

Despite the short notice, a large number of States Parties contributed to the general debate and addressed a broad range of issues beyond the immediate agenda of the Assembly, including issues of cooperation, implementation and relationship agreements.

Various States Parties invested time and resources in crucial side events with the intention of building capacity, cultivating greater dialogue and exchanging information. These side events introduced key issues to the Assembly forum that had previously been addressed only in the format of NGO meetings (including, *inter alia*, the issue of implementation legislation, concerns about the Court's outreach, and the UN-ICC relationship) and added enormous value to the ASP schedule.

In another positive move, the "Omnibus Resolution" (see page 5) was strengthened by the inclusion of a number of essential paragraphs that address the broader responsibilities of the ASP including issues regarding universal ratification, implementation legislation, and oversight mechanisms, amongst others.

On a number of issues, in particular the Victims Trust Fund (VTF), delegates demonstrated a genuine and impressive commitment to reaching a final product in order to prevent any further delays.

The overall positive atmosphere and commitment of ASP delegates was, however,

tainted by problems with an overwhelming agenda, which proved daunting even for larger delegations, a somewhat non-transparent decision-making process on the 2006 budget, and an absence of 17 States Parties at the meeting. These are challenges that the CICC hopes will be solved by the ASP in the future. In the meantime, the Assembly did take some important steps in the right direction:

- The ASP agreed to meet for longer sessions in the future. From the beginning of the session there was clear and widespread agreement from States Parties that they did not have sufficient time for inclusive discussion on all of the issues on the agenda of the ASP. After heated debates, the ASP showed maturity by agreeing to meet for at least 11 days for each of the next three Assembly sessions.
- The ASP also expressed concern about the decreasing number of States Parties attending the ASP and took concrete steps to remedy the situation, including widening a trust fund to provide financial assistance to least developed countries as well as developing countries to attend sessions of the ASP.
- The ASP elected a new Bureau including two Vice Presidents in The Hague in an attempt to enhance dialogue between States Parties and requested that the Bureau improve its communication.
- The ASP acknowledged and reinforced the role of the Bureau by mandating that the Bureau consider a large number of substantive issues until the fifth session of the ASP, *inter alia*, considering measures to increase ratification and implementation of the Rome Statute, submitting proposals to improve geographical representation and gender balance in the recruitment of ICC staff and reviewing the terms of the Trust Fund for the participation of least developed countries.

On all these issues, representatives from NGOs contributed positively by providing research and other input, both before and during the session. The Issue Teams of the Coalition had worked hard to improve their own preparations and coordination, which contributed to a very constructive dialogue between NGOs and delegations on most issues addressed below. In addition to the Coalition's Background Paper, providing all participants with background information on all issues before the ASP, various CICC teams had provided research and advocacy papers to assist in the preparations and deliberations of the ASP delegations. ●

The Fourth Session of the ASP:

An Overview of the Decisions Made

The Agenda

The Fourth Session of the Assembly of States Parties (ASP) made much progress on a wide range of issues, though some key concerns still remain. The following pages present an overview of the main topics on the agenda, main results made and challenges ahead.

In brief, some of the key decisions made included: the States Parties adopted the **budget** for 2006 of €80,417,200; the **Regulations of the Victims Trust Fund (VTF)** were adopted, albeit after heated discussions; the ASP agreed to the establishment of an **ICC Liaison Office** in New York in order to enhance cooperation between the UN and the Court; the **Code of Professional Conduct for Counsel** as well as the **Omnibus Resolution** was adopted, now also addressing the **recruitment** of staff. An additional bid by the Dutch government concerning the **permanent premises** of the Court gave new impetus to the discussion. In addition, **outreach and communications** were discussed by the ASP. ●

The Budget

The ASP adopted the Programme Budget for 2006 of €80,417,200, which is an increase of almost 20% in comparison with the Court's budget in 2005.

In previous years, concerns had been raised that states focused in too much detail on the recommendations of the Committee on Budget

and Finance, amounting to micromanagement. This year the Assembly took the opposite approach, approving as a package all cuts recommended by the Committee on the basis that the Assembly simultaneously provided budgetary flexibility to allow the ICC to move resources within its major programmes, which could be used if resources that were cut were ultimately needed.

Although the Budget and Finance Team recognises that the budget process leading up to the Assembly was greatly improved compared to previous years, it was particularly concerned that the new approach prevented the Assembly from addressing a few serious concerns it had raised in relation to recommended cuts to outreach functions, legal aid and training for defence and victims' counsel, and victims' protection and support. ●



The ASP Working Group on the Budget adopts the Programme Budget recommended by the CBF. From left to right: Ralph Martens (Director of Common Administrative Services of the ICC), Bruno Cathala (ICC Registrar), Ambassador Ryan (Chairman of the Working Group) and Medard Rwelamira (ASP Secretariat Director). ●

The Regulations of the Victims Trust Fund

Regarding the adoption of the regulations of the Victims Trust Fund (VTF), the contentious issues were aired at the beginning of the ASP including: the timing of the VTF's interventions, the definition of victims, the independence of the Fund and the issue of the earmarking of contributions.

During the ASP, Ambassador Juan Manuel Gomez Robledo (Mexico) chaired the Working Group on the VTF. After holding many informal meetings, states finally agreed to the following compromise in which the VTF Board was empowered to "provide physical or psychological rehabilitation or material support for the benefit of victims and their families", provided that the Board has "formally notified the relevant Chamber of the Court of its conclusion to undertake specified activities

[...] and the relevant Chamber of the Court has responded and has not, within a period of 45 days of receiving such notification, informed the Board in writing that a specific activity or project [...] would pre-determine any issue to be determined by the Court [...] or violate the presumption of innocence [...] or be prejudicial to or inconsistent with the rights of the accused and fair and impartial trial." There is also a provision to extend the period of 45 days if needed by the Chamber in consultation with the Board. Should the Court and the Board not reach such agreement, the period of extension is 30 days.

Regarding earmarking, States will not be able to earmark contributions to the VTF but non-State contributors will be allowed to earmark up to one-third of their donation while

respecting some criteria to ensure that there is no discrimination in the way funds are used to assist victims.

The NGOs in general welcomed the compromise achieved by the States Parties. The VTF Team worked hard before and during the ASP to ensure a number of principles. In particular, it was crucially important for the regulations to allow the Trust Fund to act as early in the proceedings as possible so that it can assist a broader scope of victims who urgently need assistance. The NGOs feel that the compromise reached will hopefully provide the independence necessary for the Board of Directors to act quickly, while at the same time ensuring that safeguards exist to guarantee that the rights of all parties to the judicial proceedings are respected. ●

The ASP Bureau

The new ASP Bureau is presided over by Ambassador Bruno Stagno Ugarte from Costa Rica. The Austrian Ambassador Mr. Erwin Kubesch and the South African Ambassador Ms. Hlengiwe Buhle Mkhize in The Hague serve as Vice Presidents.

The Bureau is further composed of representatives from Belize, Bolivia, Croatia, Cyprus, Democratic Republic of Congo, Denmark, Estonia, France, Gambia, Jordan, Kenya, Netherlands, New Zealand, Niger, Peru, Republic of Korea, Romania, Samoa and Serbia and Montenegro. ●

Permanent Premises

During the ASP's discussions on the future premises of the Court, the Netherlands, the ICC's host state, announced that it would contribute significantly to the permanent housing for the ICC. If the ASP will decide to go ahead with purpose-built premises on the site of the Alexanderkazerne, the Host State will offer the Assembly a favourable loan of up to €200 million to be paid back over 30 years at an

Code of Conduct

The ASP decided on the adoption of the draft Code of Professional Conduct for Counsel. The only contentious issue that was raised during the first formal meeting of the Working Group was draft Article 22, which imposed an obligation on counsel to report their client to the Registry if the client attempted to engage counsel in a fee-splitting agreement.

A number of States were worried about consequences of this article on the right to confidentiality as defined by Article 67 of the Rome Statute and the impact such a provision would have on the counsel/client relationship. Those concerns were shared by the Coalition's legal representation team which produced,

commercial terms which would, most likely, be very expensive. However, the Netherlands' latest offer might quell some concerns of States Parties and also encourage a final decision on the permanent premises at the ASP's next session at the end of 2006.

In the meantime, the ASP adopted a resolution on the premises, in which the Assembly welcomes the additional bid made by the Host State and recognises that a

ahead of the ASP, a position paper on draft Article 22 outlining the team's concerns and suggesting that alternatives be drafted. Italy, supported by a large number of States, raised these concerns and suggested an alternative text.

Finally, the ASP adopted the Code of Conduct with a new Article 22 agreed to on the basis of the Italian compromise. The new provision provides that counsel shall sign a declaration and that counsel will advise the client of the prohibition of such conduct should the suggestion be made by a client. Article 22 also reminds counsel that any breach of their obligations under this article shall be subject to disciplinary procedure. ●

Interim Premises – Resumed Session

The Assembly considered the urgent issue of the interim premises, during the resumed Fourth Session on 26 and 27 January 2006 at the UN in New York. The Court had submitted a report urging the Assembly to address the lack of office space in the Arc in The Hague, where it is currently located. The issue has become more urgent now that Eurojust, which occupies one wing in the Arc, will not be moving to new premises as was expected.

However, the Assembly was not able to find a solution during the resumed session. Instead, the ASP referred the issue to the Bureau Working Group in The Hague and requested the Committee on Budget and Finance to address this issue as soon as possible. The Assembly also decided that if necessary, it would have to reconvene prior to the fifth session to address the matter. ●

New York Office

The Assembly of States Parties decided during the fourth session to establish a liaison office for the ICC at UN headquarters in New York.

It will provide support to the Court's investigations, field operations and general functions by facilitating interaction between the organs of the Court and the Secretariat of the ASP as well as the United Nations and its agencies. It will also facilitate the implementation of the Relationship Agreement between the ICC and the UN, an all-important task given that cooperation between both institutions is vital for the ICC's work. The ASP decided that the office will provide practical administrative, logistical and operational support to the Court and the Secretariat of the ASP, although it will be under the authority of the ICC Registry. ●



Lars van Troost (Amnesty International), William R. Pace (CICC Convenor) and Cecilia Nilsson (CICC) discuss the premises issue in the Delegates' Lounge on 30 November 2005. ●

interest rate of 2.5%. In addition, the land will be provided free of charge and also the selection of an architect will be on the Host State's account. According to the Netherlands, these incentives will result in a 40% reduction of the costs of the future premises. However, the offer is limited to building new premises at the site of the Alexanderkazerne and not applicable to the other two options, namely moving the ICC to the ICTY building or remaining in the Court's current premises.

Many States Parties had voiced criticism about the Dutch proposal to finance on

purpose-built building on the premises of the Alexanderkazerne would probably offer the most flexible solution in matching the requirements of the court. The Assembly also requests the Bureau to further prepare a decision.

When the Rome Statute was adopted, the Netherlands promised that it would pay for the Court's building for the first ten years. This rent-free period will run out in 2012 and the ASP has to quickly find an appropriate, and permanent, solution for the following years to ensure a smooth transition from the current building to permanent premises. ●

Outreach

For the first time, outreach was discussed during the session of the ASP and also mentioned in the Omnibus Resolution, as well as in various official statements by States Parties.

The Omnibus Resolution “recognizes the importance for the Court to engage communities in situations under investigation in a process of constructive interaction with the Court, designed to promote understanding and support for its mandate, to manage expectations and to enable those communities to follow and understand the international criminal justice process” and further encourages the Court to intensify its outreach activities. The Omnibus Resolution also requests that the Court present a detailed strategic plan in relation to its outreach activities to the Assembly.

In its general statement, Sierra Leone highlighted the importance of outreach, stating: “For the ICC to have an impact on peace, to achieve its mandate and potential in contributing to conflict resolution and prevention, and in the restoration of the rule of law, the ICC must undertake effective outreach, it must ensure its mandate, mission and limitations are understood by its ultimate clients: the population affected by crimes falling within the Court’s jurisdiction (...)Engaging the population in interactive dialogue with and about the Court is not a luxury, it is absolutely essential for the system to work at all, and has yielded substantial returns for Sierra Leone’s investment in accountability as a path to sustainable peace.” In the same statement, Sierra Leone suggested that the Bureau consider establishing a Focal Point on Outreach.

Recruitment

The ASP adopted the Omnibus Resolution which contains one paragraph on the recruitment of staff. This paragraph reminds the Court to seek equitable geographical representation and gender balance in the staff recruitment in order to ensure that the Court’s staff represents all States Parties and reflects equal numbers of women and men.

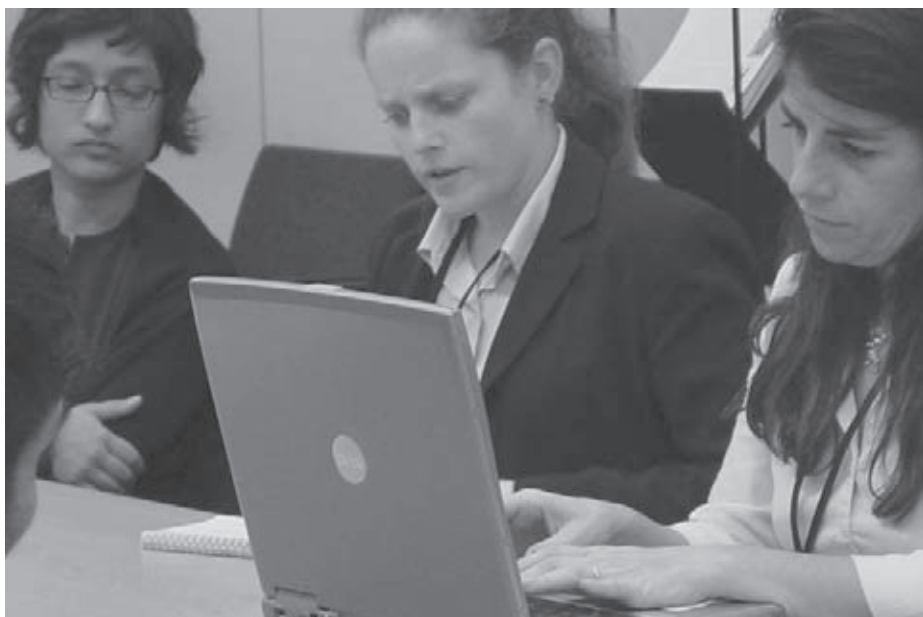
The ICC currently employs a system of target percentages to determine how many staff members can be recruited from each State Party. This system takes into account, for example, a State’s contribution to the ICC budget and its population size. Currently, the system favours the West European and Others regional group.

The Assembly of States Parties has also invited the ASP Bureau, in cooperation with the Court, to submit proposals to improve equitable geographical representation and gender balance and to also report back on this issue to the Assembly at its fifth session. ●

The representative from the Democratic Republic of Congo, Ambassador Vital-Budu-Tandema, spoke on this issue as well: “There is still a job to be done: to objectively inform and train the Congolese people in issues concerning the fundamental rules of the Rome Statute of the International Criminal Court and its Rules of Procedure and Evidence through public outreach campaigns, seminars and other scientific forums, so they can be allowed to limit their expectations through the knowledge of the precise rights that they can anticipate.”

The Working Group on the Budget requested the Registrar to ensure that the

outreach activities predicted for 2006 are accomplished and that a detailed strategic plan be prepared in relation to its outreach activities. This strategic plan, which would include performance indicators, would be submitted for consideration by the Committee on Budget and Finance and the States Parties in advance of the fifth session of the Assembly. This decision followed a long debate on the importance of outreach in the Working Group during which Germany, New Zealand, Niger, Nigeria, Norway, Senegal, Sierra Leone, South Africa, Sweden and the UK made strong statements regarding the importance of outreach for the success of the Court. ●



Wasana Punyasena (American NGO Coalition for the ICC), Alison Smith (No Peace Without Justice) and Sally Eberhardt (CICC) discuss the Court’s communication strategy on 29 November 2005. ●

Omnibus Resolution

For the third consecutive time, the ASP adopted an ‘Omnibus Resolution’, formally titled ‘Strengthening the International Criminal Court and the Assembly of States Parties’ (Resolution ICC-ASP/4/Res.4).

The Omnibus Resolution addresses a number of issues related to ratification and implementation of the Rome Statute, cooperation, outreach, recruitment, the participation of States Parties in the ASP, working groups of the Bureau as well as the dates and venue of the next sessions of the ASP and the

Committee on Budget and Finance. It also introduces a proposal for an independent oversight mechanism and for a possible change in the financial period of the Court. ●

Future Sessions of the Assembly

Fifth Session

The Hague: 23 November - 1 December 2006

New York: Resumed Fifth session (Special Working Group on the Crime of Aggression), 29 - 31 January 2007

Sixth Session

New York: At least eleven days in 2007 (including three days exclusively for the Special Working Group on the Crime of Aggression)

Seventh Session

The Hague: At least eight days in 2008

New York: Resumed session of at least two days in 2009

European Centre for Conflict Prevention: Searching for Peace

Paul van Tongeren, Director of the European Centre for Conflict Prevention (ECCP) in Utrecht, argues that those who work on conflict situations – international organisations, NGOs and governments alike – need to know the kind of conflict they are facing in their work.

To facilitate the free-flow of this kind of information between groups, the ECCP coordinates a network called the Global Partnership for the Prevention of Armed Conflict that links organisations working on conflict prevention and peace-building throughout the world. As Mr. Van Tongeren puts it, “Organisations can become more influential if they know that other actors with similar mandates exist, and find ways to cooperate.”

Through this network, the Centre provides information about conflicts to those stakeholders that need it most. “It happens a lot that organisations go to a conflict situation without knowing who all of the warring parties are and what the background of the conflict is,” Van Tongeren explains. “As the ICC operates in one of the most conflict-

ridden regions in the world, knowledge of and insight into the conflicts is key to the effectiveness of the Court’s activities and, similarly, of the NGOs that operate there.”

Van Tongeren says that organisations like the ICC and the tribunals have a broader mandate than just a judicial



Paul van Tongeren, Director of the European Centre for Conflict Prevention. ●

one. “Prosecuting responsible individuals in a conflict should also be part of the resolution of that conflict,” he notes. “That can only be done if one knows the

complex dynamics of the situation.”

But while peace and justice needed in conflict situations, they do not necessarily go hand-in-hand. “It can be frustrating to see that the worst criminals are set free under a scheme of amnesty. But at the same time a general pardon can be an effective solution to end decades of violence and help a country move forward. It could be disastrous if arrest warrants lead a rebel group to leave the negotiating table and resume fighting. These are difficult and complex processes that we cannot just change from a distance in New York or The Hague, but that we need to address with our eyes and ears on the ground.”

To facilitate this, the ECCP has published a series of books, ‘*Searching for Peace*’, covering conflicts in each region of the world. “These resources are an indispensable tool for anyone working directly or indirectly with conflict,” notes Van Tongeren. “The books provide analyses of all known conflicts and include directories of NGOs in the regions that deal with conflict resolution and prevention. This allows stakeholders to contact experts in the field and be better prepared.” ●

Interchurch Peace Council: Higher Social Goals

The Interchurch Peace Council (IKV) in The Hague was established by churches against the backdrop of the build-up of nuclear weapons in Europe in the 1970s and 1980s to work on security policy. Its director, Jan van Montfort, now operates an organisation with a different mandate. “After the end of the Cold War,” Van Montfort notes, “we moved our interest to supporting peace movements in conflict situations around the world with the aim of mitigating the consequences of conflicts and advocating for the protection of civilians. We have partners in 18 countries from the former Yugoslavia to Kashmir.”

The expanded scope of IKV has brought with it new challenges and the chance to develop new expertise. As Van Montfort explains, “We also try to link our activities abroad to Dutch society and bring our work to the attention of our constituencies here. A good example is our work in Srebrenica where we created a city partnership with the Dutch municipality Heumen [close to Nijmegen]. People from

Heumen visit Srebrenica about twice a year and help them out with youth camps and other activities. Through our work in Srebrenica and elsewhere, we have learnt that there is much more to peace building



Jan van Montfort, Director of the Interchurch Peace Council. ●

than just agreeing to end a conflict. It also involves democratisation and finding ways of being able to look each other in the eyes again: reconciliation. It is encouraging for the survivors of Srebrenica to see that their case is being dealt with by serious commissions and the ICTY in The Hague.”

But Van Montfort explains that there is still a lot to be done for tribunals like

the ICTY and the ICC, commenting, “It remains an important challenge to make the link between the work of the ICC and the communities that have suffered at the hands of the war criminals. The way we witness the trials is often very different from how they are portrayed back home. The media often presents trials as if there are political motives involved. To address this issue, we take people from Srebrenica who visit us to the ICTY to help them understand how the process works. Also the ICC should communicate information about their mandate and what they are doing to affected communities. There is more to international justice than just the legal process; there is a responsibility to influence public opinion, to initiate a discussion on war crimes and to offer possibilities for truth-finding, justice and reconciliation, however precarious the balance between them may be. If the ICC tries and convicts individuals, it would be somewhat of a missed opportunity not to communicate that story and feed into the social normalisation process. There is a higher social goal that has to be taken into account.” ●

ICC Strategy on Outreach and Communications: Setting standards for transparency, effectiveness and independence

By Deborah Ruiz-Verduzco

Outreach is the most important non-judicial function of the work of the ICC – so stated Sierra Leone, backed with the authority of its own experience in the realm of justice and outreach, at the General Debate of the Fourth Assembly of States Parties (ASP) in November. Various States Parties, from Germany to Uganda, echoed the need to prioritize the ICC’s “outreach activities”, a term used to describe the delivery of targeted information for victims and local communities impacted by the operation of the ICC. More importantly, this recognition also came directly from the Assembly’s Plenary in the form of an all-new request that the Court produce a report on its outreach and communications strategy before the next Assembly in November 2006.

The goal to develop a strategy on outreach and communications (O&C) is two-fold. First, O&C is a tool for reaching the short-term objectives of the Court. The Court must effectively implement O&C activities in a timely manner in order to allow the different organs of the Court the possibility of reaching their objectives in providing needed information to victims, NGOs, religious groups, governments, and the many other stakeholders in the Court, especially in ICC situation countries. Secondly, O&C is an end in itself. For justice to be done, it needs to be seen being done. Thus, delaying the implementation of the O&C strategy only compromises the long-term objectives of the Court.

Although parts of such a strategy must remain strictly internal for the sake of the Court’s independence, the sharing of the Court’s O&C strategy with States and other stakeholders should not be viewed as overly problematic when one considers that in developing, implementing



Adwoa Kufuor, Campaigner with the Sudan Organisation Against Torture, addressing the ASP on 3 December 2005.

and evaluating an O&C strategy transparently with stakeholders, the Court actually can ensure both its effectiveness and its independence.

The experiences of the ICTY and ICTR demonstrate the high costs of a delayed or limited approach to outreach. In light of this especially, the Assembly’s request for an annual outreach report holds within it the promise that the ICC will not repeat the mistakes of the ad hoc tribunals. Unfortunately, however, the reality of cuts to three out of the eight requested Field Office positions in the 2006 Budget will pose significant limitations to outreach. But an O&C strategy report from the Court in 2006 should help to guarantee that the States Parties will provide indispensable financial resources in the coming year and will help to eliminate the risk of outreach being marginalized within the larger budget.

Furthermore, in the same way that an O&C strategy would help to dispel inaccurate expectations about what the Court can actually do, publishing parts of this strategy should help to establish clear and realistic expectations and also delineate the actual capacities and limits of the Court in relation to O&C. Also, it would help donors and NGOs to identify the appropriate activities to be carried out by local and international actors to complement the activities of the ICC. These results would not only be cost-effective, they would also help guarantee the Court’s overall effectiveness. The Court would be expected to implement outreach activities in accordance with its mandate, capabilities and responsibilities in the same way that NGOs, governments or other stakeholders are expected to do such things, all the while respectful of each other’s institutional independence. Therefore,

the Court’s strategy and public report need to detail clear mechanisms for revision, feedback, and communication- and information-sharing with partners and with audiences for all stages of the strategy, from its development to its implementation and evaluation.

Despite the aforementioned cuts in the requested field office positions, the Assembly has allowed for greater flexibility in transferring funds between programs as a way of dealing with potential outreach and communications gaps that may arise this year. This flexibility will have to be proven against the Court’s effective prioritization of outreach activities, thus establishing clear records of transparency and accountability.

In producing new outreach materials and with its current revision of the ICC website the Court has, despite its limited resources, started to set the right path in respect to its public information and external relations activities. However, the Assembly’s current request suggests that in 2006 the Court will have to prioritize strategic thinking and acting on outreach. Developing an O&C strategy for such a unique institution is a tremendous challenge in which stakeholders like States Parties and NGOs need to be engaged, taking into account two definitive facts. First, that affirming the message of “fighting impunity” can be credible only if it is delivered by the Court itself. Second, that the indicators of the O&C strategy’s success can be found solely within the ultimate benefactors of the ICC, the affected individuals and communities, who remain the *raison d’être* of the Court. ●

Deborah Ruiz-Verduzco is Advisor for Latin American Programmes, Parliamentarians for Global Action (PGA)



Richard Dicker, Director of the International Justice Program at Human Rights Watch, speaking at the CICC Press Briefing at the Assembly of States Parties on 28 November 2005. ●



Bukeni Tete Waruzi Beck, Director of the Congolese NGO Ajedi-Ka, presenting his film “A Duty to Protect: Justice for Child Soldiers in the DRC” for fellow NGOs, members of the Court and States Parties at the ASP. ●

The ASP Bureau Vice-Presidents:

A concrete link between the Bureau and The Hague

In an unprecedented move, the ASP has appointed two ambassadors based in The Hague as the Vice Presidents of the ASP Bureau. H.E. Ms. Mkhize of South Africa and the Ambassador of Austria, H.E. Mr. Erwin Kubesch will represent the Bureau in The Hague at the seat of the Court. *Insight on the ICC* asks them about their views on the ICC and what goals they seek to accomplish during their three-year terms as ASP representatives. ●

By Erik van der Veen

H.E. Hlengiwe Buhle Mkhize

Could you explain what your first encounters were with the ICC?

When I was chair of the Reparations Committee of the Truth and Reconciliation Commission (TRC) in South Africa, I attended a workshop on reparations in Geneva organised by REDRESS. That was the first time I came in contact with the Rome Statute and the International Criminal Court. As a member of the TRC, I became conscious that reconciliation and justice are all about restoring the dignity of the victims and reparations are an essential part of this. Bringing justice and reconciliation to people that have suffered the worst crimes is a great challenge. Victims are especially vulnerable, as they stand in the centre of it all.

What about your country's experiences with justice and impunity issues?

It is our experience in South Africa that a strong civil society movement can encourage the victims to speak out. Emotionally, it is often hard for them to fight for justice on their own. The majority of the people do not understand the judicial process. NGOs can help create a greater understanding of judicial institutions. In South Africa, for example, churches helped a lot in making people aware of the Truth and Reconciliation Commission. Communities in general have played an indispensable role in helping victims and witnesses to understand the process and to prepare them for testifying before the Truth and Reconciliation Commission.

Can you comment on the days ahead for the Court?

The yardstick of how the world will measure the success of the Court depends on what it brings to those who have suffered most from the worst crimes. There are always people who will try to frustrate the process, people who



H.E. Ms. Hlengiwe Buhle Mkhize, Ambassador of South Africa. ●

have something to fear from the Court. But they cannot do that if the Court's work is well-known and it enjoys widespread support. Also, if communities are aware of the proceedings of the Court, they will have a greater sense of ownership. These processes should be more

than just legal; they have an important social function as well.

The question of the permanent premises is also on the agenda of the ASP Bureau. How do you think the ASP Bureau Vice Presidents can contribute?

The benefits for a host state to house an organisation like the ICC are enormous, especially for a state with such a strong commitment to peace and human rights like the Netherlands. We have to raise the flag and seek to engage the Host State on this issue so as to resolve the situation quickly. I feel it is important that the Court be housed in an inspiring and solemn building that reflects the seriousness of the cases it deals with. The victims or witnesses that enter the Court should experience a sense of healing.

Currently, the most favourable option for the Court's permanent seat is to move to the Alexander barracks at the outskirts of the city. What are your thoughts?

The Court should get a place in the centre of the city where everyone can see it.

In what other ways could you, as Vice President, contribute to the work of the Bureau?

We have a responsibility to encourage States Parties to cooperate with and assist the Court. They should not only think: we have paid our contributions and that's it. They should also provide logistical and political support. That will make the Court's life a lot easier. ●

H.E. Erwin Kubesch

How do you envision your new role as Vice President of the Assembly of States Parties Bureau?

While the President of the ASP Bureau, Ambassador Stagno Ugarte in New York is the focal point for all major issues and the active link to the UN system, the Vice Presidents in The Hague will mainly fulfil the role of brokers between the concerns of the Court and the Host

State. The ASP Bureau has regular meetings in New York, which makes it difficult for the Vice Presidents to attend. But we will stay in contact through email and we will send representatives to the meetings in New York so we can stay informed about developments.

What do you think are the most pressing issues you have to contend with?

The main issue that we will deal with here in The Hague in the near future is the Court's

premises. Currently, the most burning issue is to help the Host State and the Court to find a solution for the interim premises. The Court needs additional space as soon as possible, even in the next months. But also the permanent premises is an important item on our agenda. After the generous offer that the Host State introduced at the ASP [see section on Permanent Premises, page 4], we will have to accompany the process and make sure that we come to an outcome that satisfies all parties.

At the last session of the ASP, it was decided that the Bureau would take on the issue of the permanent premises and report back to the Assembly at its fifth session. Can you comment?

We could consider setting up an expert body on the issue that could help the Assembly to further prepare for the decision that it will have to take hopefully later in 2006. The ICC started here and should also have its permanent seat here in The Hague, as the legal capital of the world.

How do you think you could contribute to the issue of permanent premises?

I hope that during my time as member of the Bureau, I will witness the beginning of the construction of the future premises, which should be a leading example of architecture that reflects the dignity of its historic task, now but also in 2050. Apart from its symbolic value, it is essential that the Court is provided with the necessary space to effectively fulfil its judicial functions, in particular taking into account the rights of victims and their counsel, as well as of the need for flexibility that will allow the Court to expand if necessary. It is no less important

to have enough room for stakeholders like NGOs, the media and the interested public.



H.E. Mr. Erwin Kubesch, Ambassador of Austria. ●

Among other things, this is a Court that has to communicate with the world; only then will it be able to bring justice to those who need it most.

Apart from the premises issue, what are the other main challenges the Court has to address?

One challenge is universality: we want to realise worldwide ratification and implementation of the Rome Statute. But that means we still have to get some very important countries on board. This is one issue, for example, that the ASP Bureau can better address from New York where all nations are represented. It is no easy task to set up such an institution from the scratch. It is something that has never existed before in the history of mankind. We have seen the Nuremberg and Tokyo tribunals, where justice was done by the winners of the war. And the ad hoc tribunals for Rwanda and the former Yugoslavia are there to address specific situations. Now, we are starting something new, something that is for everyone and for the future, and not, as was the case for the other tribunals, for the past. That is not in the least thanks to the efforts of NGOs, which have been crucial in setting up the Court, in particular, by making governments aware of the importance of such an institution. War crimes are of all times and they still take place today and NGOs have maintained this awareness. ●

Pre-Trial Chamber I Allows Participation of Victims in Investigations

By Karine Bonneau

On 17 January 2006, Pre-Trial Chamber I of the ICC issued a decision that grants the status of victims to six Congolese petitioners, allowing them to participate in the investigations in the situation in the DRC. The Pre-Trial Chamber rejected the arguments of the Prosecutor and of the defence and judged that Article 68.3 of the Statute of the Court applies to the phase of the investigations in

the situation (and not only to the subsequent phase of the case), either before the issuance of an arrest warrant or a comparable decision. The Chamber defines the conditions of the scope of Article 68.3 in conformity also with the evolution of international law, as well as the standing of victims in the sense of Rule 85 of the Rules of Procedure and Evidence. In conclusion, the Chamber authorises the participating victims to: 1) present their views

and concerns; 2) deposit evidence; and 3) request the Pre-Trial Chamber to order specific measures. The Prosecutor has requested the authorisation to make an appeal. ●

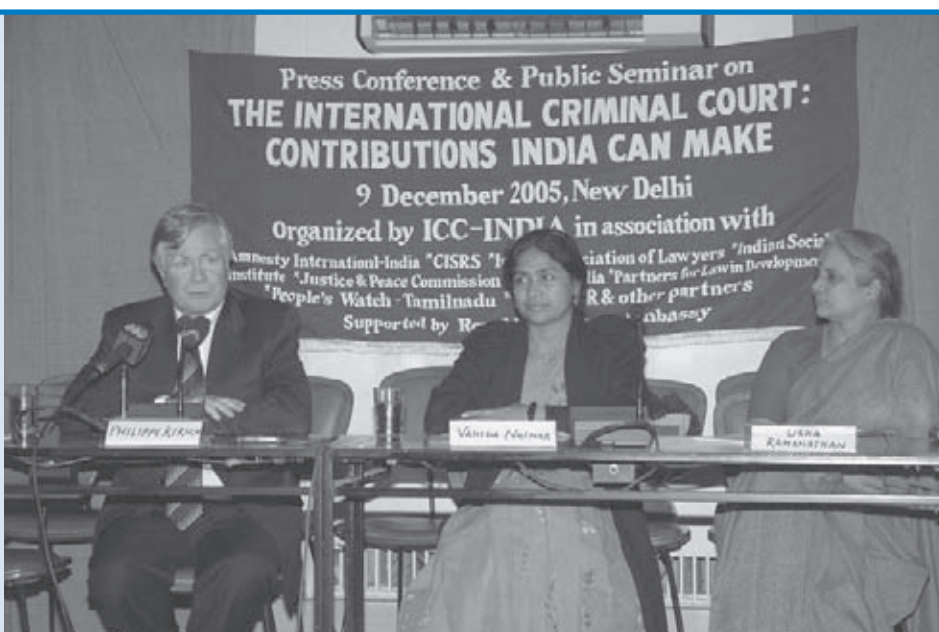
Karine Bonneau is Director of the International Justice Programme of the Fédération internationale des ligues des droits de l'Homme (FIDH) ●

President Kirsch visits India

ICC President Philippe Kirsch participated in a series of NGO briefings on international justice and the role of the Court. The seminars were organised by the ICC-India campaign and held from 8 to 10 December 2005 in New Delhi.

President Kirsch was in India on the invitation of the Indian Society of International Law to attend the 3rd International Conference on "The Emerging Trends in International Criminal Jurisprudence". He also went to Pakistan at the invitation of the Research Society of International Law.

Left to right: President Kirsch, Vahida Nainar (Chair of the Women's Initiatives for Gender Justice) and Usha Ramanathan (founding member of the ICC-India campaign). ●



2005: A Pivotal

Central African Republic Refers Situation - Security Council Refers Situation in Darfur, Sudan -

The year 2005 witnessed numerous significant developments at the International Criminal Court (ICC). With the Darfur referral and the issuing of the first-ever arrest warrants, the ICC entered a new phase of work. The *Insight* looks back at some of the highlights of the last 12 months. ●

January

Central African Republic Refers Situation to ICC

On 7 January 2005, the Office of the Prosecutor of the ICC announced receipt of a referral regarding the situation of reported crimes within the Central African Republic (CAR). The referral was transmitted in a letter sent on behalf of the CAR government to the office of ICC Prosecutor Luis Moreno-Ocampo and referred to crimes committed anywhere in the territory of the CAR since 1 July 2002, the date of entry into force of the Rome Statute.

This was the third announcement of a referral by an ICC State Party, following announcements regarding the situations in Uganda and the Democratic Republic of Congo in 2004. In accordance with the Rome Statute, the Prosecutor began analysing whether to initiate formal investigations in the CAR situation. The analysis is reportedly ongoing. Civil society organizations in the CAR and international groups were instrumental in facilitating the ICC's potential involvement in addressing the country's domestic unrest. ●

March

Security Council Refers Darfur Situation to the Court

In an unprecedented move, 31 March 2005 saw the United Nations Security Council vote to refer the situation in Darfur, Sudan to the International Criminal Court (ICC). According to the UN, tens of thousands of people have died in the region and close to two million people have been forced from their homes in the past two years. The Security Council vote counted 11 countries in favour of the referral and four countries – Algeria, Brazil, China and the United States – abstaining. The vote marks the first time the Security Council has referred a case to the Court.

In early June 2005, just three months after the referral, the ICC's Office of the Prosecutor announced the start of formal investigations in the region following receipt of more than 2,500 items relating to the Darfur situation including a sealed envelope from UN Secretary-General Kofi Annan that contained the International Commission of Inquiry conclusions about the Darfur situation.

At the end of June 2005, in another first for the Court, Prosecutor Moreno-Ocampo addressed the United Nations Security Council about the activities and planning undertaken by his office since the March referral noting that the investigation would be “impartial and independent, focusing on the individuals who bear the greatest criminal responsibility for crimes committed in Darfur.” ●

October

International Criminal Court Unseals First-Ever Arrest Warrants

On 14 October 2005, the Court announced the unsealing of arrest warrants for five senior leaders of the Lord's Resistance Army (LRA) in Uganda, including LRA leader Joseph Kony.

Although the arrest warrants were issued by the Court's Pre-Trial Chamber on 8 July 2005, they were kept under seal until 13 October. The five senior leaders of the LRA named in the arrest warrants are: Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Raska Lukwiya. A total of 33 criminal counts are listed against Joseph Kony on the basis of his individual criminal responsibility. These are listed as 12 counts of crimes against humanity, including murder, rape, enslavement, sexual enslavement, and inhumane acts of inflicting serious bodily injury and suffering; and 21 counts of war crimes including murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, pillaging, inducing rape and forced enlistment of children.

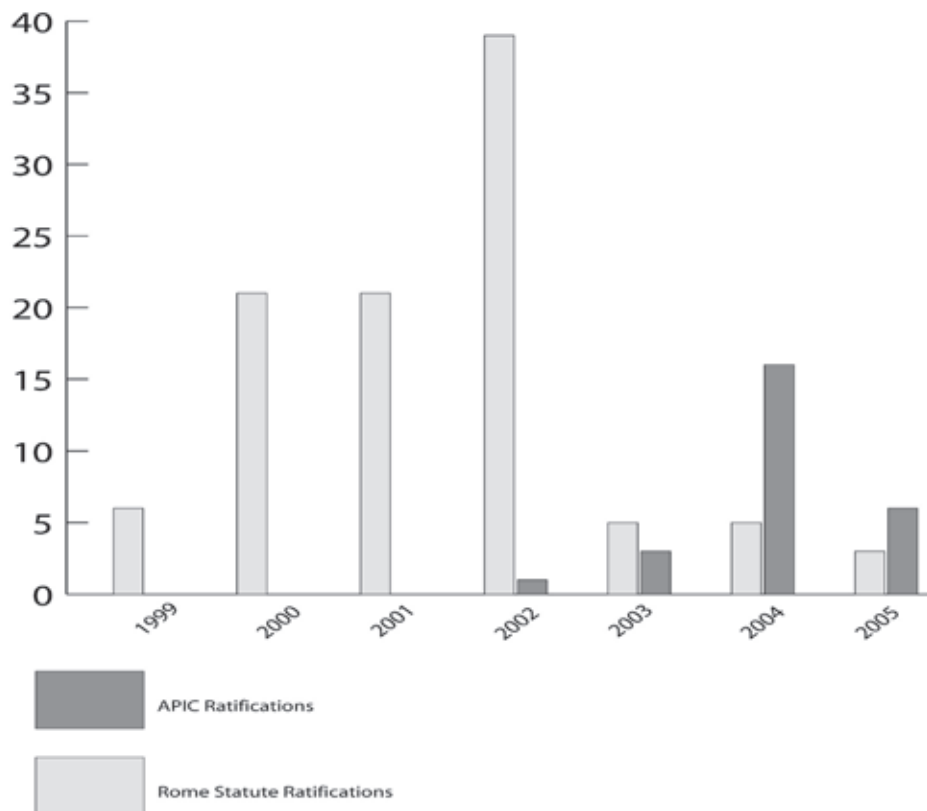
Vincent Otti is accused on 11 counts of crimes against humanity and 21 counts of war crimes; Okot Odhiambo on 2 counts of crimes against humanity and 8 counts of war crimes; Dominic Ongwen on 3 counts of crimes against humanity and 4 counts of war crimes; and Raska Lukwiya on 1 count of crimes against humanity and 3 counts of war crimes. At a news conference on Friday, 7 October, Ugandan Defense Minister Amama Mbabazi said that Dominic Ongwen had been killed by Ugandan troops on 30 September during an LRA incursion into the eastern sub-region of Teso. ●



The Deputy Prosecutor for Investigations, Serge Brammertz, answers questions from the press after receiving the UN's files on the Darfur situation at the ICC building on 5 April 2005. ●

Year for the Court

First-Ever Arrest Warrants - Mexico Ratifies: 100 States Parties - ICC Reports to General Assembly and Security Council



October

Mexico Becomes 100th State Party

On 28 October 2005 in a ceremony held at the United Nations Headquarters in New York, Mexico deposited its instrument of ratification of the Rome Statute of the International Criminal Court, becoming the 100th State to ratify the Rome Statute. Mexico overcame a series of considerable political and constitutional hurdles to make the treaty deposit which began with Mexico's signature of the Rome Statute on 7 September 2000.

Commenting on the momentous achievement Maria Sirvent, Coordinator of the Mexican Coalition for the International Criminal Court, said, "Mexico's ratification of the Rome Statute represents an important advance in the fight against impunity. We have prevailed in a long and difficult struggle to get to where we are today and we want to congratulate all the government authorities who were involved in this process."

The landmark 100th ratification was seen by NGOs around the world as a testament to the remarkable strides made by the ICC and its supporters in its short history to date. On the day of the treaty deposit, William Pace, Convenor

of the Coalition for the International Criminal Court said, "Today's ratification represents another remarkable advance in the globalization of international justice. One hundred nations today are building a bridge to a more peaceful 21st century." ●



President Philippe Kirsch of the ICC addressed the United Nations General Assembly on 9 November 2005, delivering the first-ever ICC report to the Assembly. Credit: UN ●

November

First UN-GA ICC Report

On 9 November 2005, ICC President Judge Philippe Kirsch delivered the Court's first-ever report to the United Nations General Assembly. Judge Kirsch's address included updates on the Court's current cases in Uganda; the Democratic Republic of Congo; and Darfur, Sudan.

Following the report, 25 UN Member States, that spoke on behalf of more than 100 nations, made substantive interventions at the General Assembly which included support for the ICC's work. These interventions comprised comments about the impressive developments made at the Court to date, defense of the integrity of the ICC treaty, and calls for stronger cooperation with the Court from the UN and Member States alike. Many states pledged their commitment to cooperating with the Court. Although the ICC signed a Relationship Agreement with the UN in September 2004, it remains an independent judicial organisation that lacks its own police force, making UN and state cooperation with the ICC all the more important.

Noting the impressive strides made by the Court in its short but remarkable history to date, Swiss Ambassador M. Peter Maurer said, "[T]he Court has become, in a very short space of time, an indispensable pillar of the international peace and security architecture...[and] has become a true cornerstone of the fight against impunity at the international level." ●

Brammertz Takes on UN Investigation in Lebanon

On 16 January 2006, ICC Deputy Prosecutor for Investigations, Mr. Serge Brammertz, was granted leave to take on the role of Commissioner of UN International Independent Investigation Commission (UNIIC) in the investigation into the assassination of former Lebanese Prime Minister Rafiq Hariri. Mr. Brammertz succeeds Mr. Detlev Mehlis who served as UNIIC Commissioner for the first six months of the investigation. The UN Security Council decided in December 2005 to extend the mandate of the Commission for an additional six months.

After consultations with the ICC President and the Bureau of the Assembly of States Parties, ICC Chief Prosecutor Luis Moreno-Ocampo granted Mr. Brammertz a six-month leave of absence from the ICC Office of the Prosecutor. During Mr. Brammertz's six-month leave, Mr. Moreno-Ocampo will serve as Officer in Charge of the Investigation Division with Michel de Smedt, Head of the Investigations, Planning and Support Section of the Investigation Division, leading the operational work. The representational responsibilities of Mr. Brammertz will be taken on by the ICC Deputy Prosecutor for Prosecutions, Mrs. Fatou Bensouda. ●

Calendar of Events

10 March 2006

Swearing in of the newly elected Judges, The Hague.

March 2006

Faith and Ethics Network for the ICC event during the Commission on the Status of Women, New York.

15 March 2006

Netherlands NGO Platform visit to the ICC. (to join: info@cjr.nl or 070-3136800)

April 2006

Launch of the *Manual on Advancing Justice and Reconciliation in relation to the ICC*, Kampala.

24 - 26 April 2006

Committee on Budget and Finance, Sixth Session, The Hague.

Tutu Receives Cheque from NGOs for Victims Trust Fund

By Margot Stroeken

On 24 November at a fundraising dinner in The Hague organised by the Centre for Justice and Reconciliation, Archbishop Desmond Tutu, one of the five board members of the Victims Trust Fund (VTF), accepted a cheque for €50,000 for the VTF. Four large Dutch organisations, Cordaid, ICCO, Hivos, and Novib each donated €10,000. Smaller donations were made by the Centre for Justice and Reconciliation, the CICC, the Dutch Federation of Christian Trade Unions (CNV), CMC (a Dutch missionary organisation), Justitia et Pax, Save the Children Netherlands and the Dutch Helsinki Committee.

In his acceptance speech, Archbishop Tutu, former Chairman of the South African Truth and Reconciliation Commission and a Nobel Prize winner, emphasised the important role of NGOs in the foundation of the International Criminal Court and the Victims Trust Fund. "You as NGOs sometimes don't know your own strength", he said. "You are a tremendous part of God's blessing."

The cheque was presented by Anne Offermans from the Centre for Justice and Reconciliation who also serves as the Chair of the Dutch NGO Platform for the International Criminal Court, a coalition of Dutch organisations that support the ICC. The fundraising dinner illustrated the close

solidarity that Dutch NGOs have built up with the Fund.

The VTF was established in 2002 by the Assembly of States Parties to the ICC "for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims." A week after the fundraising event, the Assembly adopted the Regulations of the VTF which consolidated the working framework of the Fund and has allowed the Fund to become fully operational.

While other fundraising initiatives for the VTF have been organised (most notably the American Victims Trust Fund Campaign), the Fund had never received a contribution from a group of only NGOs. The support that has now been expressed by the Dutch organisations will undoubtedly have an effect on NGOs in other countries.

The fundraising dinner would not have been possible without the support of the Registry of the ICC, in particular of the VTF Liaison Officer, Ms. Tathiana Flores Acuña and the Division of Victims and Counsel / Victims Participation and Reparation Section. ●

Margot Stroeken is Programme Officer at the Centre for Justice and Reconciliation (CJR) in The Hague.



Archbishop Desmond Tutu, Board Member of the Victims Trust Fund (VTF), thanks Anne Offermans of the Centre for Justice and Reconciliation for the cheque presented by NGOs to the VTF on 24 November 2005. Credit: CJR ●

About the Coalition for the International Criminal Court (CICC)

The Coalition for the ICC is a diverse, dynamic global network of over 2,000 non-governmental organisations working to promote a fair, effective and independent ICC. For more information, visit: <http://www.iccnw.org>