



Sixth Judicial Seminar of the International Criminal Court:
**SECURING MEANINGFUL JUSTICE FOR VICTIMS
– MODELS AND EXPERIENCES**

Friday, 19 January 2024, 11:15-15:15hrs CET

SUMMARY REPORT

The Sixth Judicial Seminar of the International Criminal Court (ICC, Court), titled “Securing Meaningful Justice for Victims – Models and Experiences”, was held on 19 January 2024 at the premises of the ICC in The Hague, the Netherlands.

The Seminar took place in a hybrid format, allowing for participation in person as well as online. The Seminar was highly successful with broad attendance,¹ active participation of the invitees, and rich and focused discussions.

As explained in the Concept Note (Annex 1), the Judicial Seminar was held under Chatham House rules and, accordingly, none of the views or statements contained in this summary report are attributable to individual participants, with the exception of the speakers listed on the Seminar Programme (Annex 2).

The International Criminal Court is grateful to the European Union for its financial support of the Judicial Seminar.

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In his opening remarks, the President of the ICC, Judge Piotr Hofmański, recalled that the purpose of the ICC’s annual Judicial Seminar is to provide a space for professional discussion among judges on topical issues in the international criminal justice system. “The Judicial Seminar is an event where we can talk judge to judge, comparing practices and exchanging ideas. It is also an opportunity to dedicate some reflection to what it means to be a judge and to carry the responsibilities that come with that role”, he said.

Explaining the choice of this year’s theme, he stated that while victims are not necessarily in the centre of criminal proceedings, they are important stakeholders of the justice process, and this was recognized by the drafters of the Rome Statute, who gave victims the right to participate in the ICC’s proceedings and to request reparations for the harm they have suffered. This year’s Seminar was considered an opportune time to take a focused look at

¹ The Seminar had a total of ca. 50 participants, including numerous chief justices or presidents of supreme courts as well as presidents of international and regional courts. 27 national jurisdictions and 8 international, regional or hybrid courts were represented.

these issues, as the ICC had by now developed rich jurisprudence on victim participation and on reparations principles, and had recently completed for the first time the implementation of reparations ordered in a case before the Court.

That said, the purpose of the Seminar was not to focus on the ICC only, but to compare practices across jurisdictions. Accordingly, speakers from national and regional courts were included on the agenda and the floor would be opened for everyone to participate in the conversation after the introductory presentations in each session.

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The first session of the Seminar, titled “Procedural status of the victim in criminal proceedings“, began with a presentation by ICC judge Miatta Samba on the ICC’s legal framework and practice with respect to the procedural status of victims – which, under the ICC’s Rules of Procedure and Evidence, may include natural persons as well as certain types of organisations or institutions, if they suffer direct property harm.

For natural persons to qualify as victims at the ICC, their identity has to be duly established; the events they allege to have suffered from must correspond to the matter before the Court in the proceedings in which they wish to participate; and the applicant must have suffered direct or indirect personal harm as a result of the alleged crimes. Family members or other persons with a close link to the direct victim may be considered victims if they suffered harm as a result of the crime against the direct victim.

Victim applications for participation are first screened by the ICC Registry’s Victims Participation and Reparations Section (‘VPRS’), which makes an initial assessment that is subsequently reviewed by the Chamber. Whereas the possibilities for victims’ participation are limited during the investigation phase, the situation changes considerably as of the moment when the Prosecutor decides to ask for the confirmation of charges. This is the moment when the contours of a particular case in terms of its temporal, geographic, personal and substantive scope start being decided.

Pursuant to article 68(3) of the Statute, the Court may permit views and concerns of victims to be presented and considered at stages of the proceedings determined to be appropriate by the Court. This must be done in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

In order for victims to present their views and concerns, their personal interests must be affected by the issue before the Chamber. In the ICC’s early cases, victims would be required to first demonstrate this before they were authorised to make submissions, but in more recent cases, victims are in principle entitled to respond to filings by the Prosecution and the Defence, if they consider that their interests are affected. In addition to making submissions on procedural issues, victims may also ask permission to address the Court in person to express their individual views and concerns.

It must be underlined that victims are not *parties* to the proceedings at the ICC and, as such, they do not have the same rights and obligations as parties, for instance with respect to disclosure. Given their status, victims do not have an independent right to tender evidence;

however, if they can demonstrate that their personal interests would be affected, they may petition the Chamber to call particular witnesses or to submit specific evidence. Victims may also examine witnesses called by the parties, for example in relation to matters that could be relevant to potential future reparations.

As it is not feasible to allow as many lawyers in the courtroom as there are victims, the usual practice at the ICC is for victims to have Common Legal Representatives, who are paid from the Court's legal aid budget. To attenuate the challenge of physical distance, it is commonplace for the Common Legal Representative to have a member of their team based in the country where most of the victims reside in order to act as a liaison between the legal representative in The Hague and the victims.

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As the second introductory speaker in Session 1, Chief Justice Richard Wagner presented on the role of victims in Canadian criminal proceedings. Traditionally, victims have played a limited role in such proceedings, but the situation has changed over the years, notably with the introduction of the Canadian Statement of Basic Principles of Justice for Victims of Crime in 1988 and the enactment of the Canadian Victims Bill of Rights in 2015, as well as various amendments to the Criminal Code.

Victims now enjoy the right to information (including during the investigation), protection from intimidation, protection of privacy, and the possibility to convey their views before the Court when a decision concerns them. In the context of sentencing, victims may make a statement describing the harm they have suffered, to be considered by the court. Courts also must consider the increased vulnerability of victims, particularly children and intimate partners. If a victim has passed away, their rights can be exercised by a representative, such as a family member.

Chief Justice Wagner discussed a leading Supreme Court of Canada case relating to victims of sexual offences, which demonstrates how the traditional common law approach has evolved to a more modern one that includes more protections for victims: *R. v. J.J.*, 2022 SCC 28. The case concerned a challenge to a procedural screening process for the victim's private documents – designed to prevent further victimization – which the accused claimed to be unconstitutional, infringing his fair trial rights. The Supreme Court explained that the accused's rights must be balanced against the interests of the victims and the public and held that the screening process, which protects victims from having their private lives put on display in the courtroom, was not unconstitutional. The case was significant also in that the Supreme Court had given the victim permission to become a party to the court proceedings, so she could appeal the decision of the Court of Appeal, which had gone the other way.

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The third presenter in Session 1 was Judge Tomas Zander from the Stockholm District Court in Sweden. His presentation illustrated how victims in international criminal proceedings benefit from a comprehensive framework of procedural rights in Sweden. Individuals who become victims of international crime or experience injury or loss due to such a crime are formally classified as victims. They have the opportunity to participate in the criminal

proceedings by supporting the prosecution initiated by the Prosecution Authority and/or claiming compensation from the offender. The court can decide on compensation in the context of the criminal proceedings, or decide to sever the matter, to be decided in separate civil proceedings.

Legal counsel for the victims, appointed by the court and funded by the state, play a crucial role in ensuring victims are well informed and able to exercise their rights. To ensure effective representation, they receive adequate funding covering necessary expenses, including foreign travel. Translation and interpretation services are provided to victims free of charge, and they can appear in court by video link.

Nearly every victim is required to provide a statement during the main hearing. Victims supporting the prosecution are granted procedural rights, including the ability to question the accused and witnesses, make submissions on the guilt of the accused, and the right to appeal the verdict and the sentence.

Judge Zander gave an overview of international crimes cases in Swedish courts, of which there had been a significant increase in the last decade. Victims have actively participated in such trials, with many securing compensation within the criminal proceedings. Nevertheless, Judge Zander remarked that victims have repeatedly emphasised that the most important aspect for them is not the financial compensation or the outcome of the case, but finally having the opportunity to be heard before an independent court – a point that was later echoed by other participants.

In situations where offenders are unable to compensate victims following a conviction, there is an option for state compensation from the Swedish Crime Victim Authority. However, current regulations restrict state compensation to crimes committed in Sweden or against Swedish residents at the time of the crime.

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During the open discussion, the question of whether victims are required to take an oath when appearing before a court attracted considerable attention, and it transpired that different jurisdictions have differing practices in this regard.

It was noted that article 21(3) of the Rome Statute requires the ICC to apply its legal framework in a manner that is consistent with international human rights law, and this can be used as grounds for giving victims broad rights and protection within court proceedings.

A Latin American national jurisdiction was given as an example of a jurisdiction in which victims have a strong role, with the ability to carry out procedural actions and actively intervene in the criminal proceedings. A counsel office has been created for victims to facilitate their interventions when their interests are affected.

In another Latin American jurisdiction, several trials have been held for crimes under international law, and measures were adopted to provide victims with economic as well as symbolic reparations. Legislation was adopted to recognise the role of victims and grant them certain rights in the context of criminal proceedings.

The position of victims in one West African national jurisdiction was elaborated upon during the discussion, where victims are provided with broad protection and rights. Victims can initiate criminal proceedings, or otherwise intervene at the investigation stage, and they can be provided with the services of a legal counsel thanks to a legal aid system. It was emphasised that victims are a civil party and their participation is not related to the criminal aspect of the proceedings. Closed or private sessions are employed to protect the privacy of victims, for instance in trials for sexual crimes.

More generally, the importance of psychological assistance for victims was noted during the exchanges; such assistance is available at the ICC and in many national jurisdictions.

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Session 2, titled “How to determine the most adequate form of reparations for victims?”, began with a presentation by ICC Judge Péter Kovács, who has sat in most of the Trial Chambers that have ordered reparations in cases before the Court on the basis of article 75 of the Rome Statute.

The Court’s jurisprudence has established that an order for reparations must contain, at a minimum, five essential elements: It must be directed against the convicted person; it must establish and inform this person of his or her liability; it must specify, and provide reasons for, the type of reparations ordered, whether individual, collective or both; it must define also the harm caused to direct and indirect victims, as well as to identify the modalities of the reparations; and, finally, it must identify the victims eligible to benefit from the awards of reparation or set out the criteria of eligibility. Furthermore, the convicted person’s liability must be proportionate to the harm caused as well as his or her participation in the crimes.

Judge Kovács elaborated on some of the principles used by Chambers in determining reparations, such as presumptions, statistical samples and approximations. He highlighted the challenge created by the fact that the condemned perpetrators are usually indigent, making them unable to cover the reparations. This is where the Trust Fund for Victims (TFV) established under article 79 of the Rome Statute plays a crucial role, as it may advance the cost of the reparations from funds collected through donations.

Judge Kovács stressed the good cooperation between the Trial Chambers dealing with reparations and the Trust Fund for Victims. He commented on the importance of the TFV’s ability to provide reparative measures in benefit of victims not only pursuant to judicial reparation orders, but also under its so-called assistance mandate, which is not dependent on a conviction, or even prosecution.

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The point about the cooperative relationship between the judges and the TFV was echoed by the next speaker, Ms Deborah Ruiz Verduzco, the Executive Director of the Trust Fund. She said she sees one of the roles of the TFV as being advisors to the judges during the reparation proceedings. In this phase, the Trust Fund provides input to the Chamber on the questions under consideration by the judges, along with the Prosecution, the Defence, and the Legal Representatives of Victims.

After a reparation order is issued by the Chamber, the TFV becomes the designer and an implementer of the reparation programme. The preparation of the implementation plan requires close consultation with the victims, the overarching goal being to ensure that the victims not only have a say on the implementation plan, but that they also understand and accept it. As an example, in one case, groups were organised in which the reparation order issued by the Court was read and translated to victims, who had the opportunity to ask questions and express their views, and this informed the further implementation design process. In another case, consultations resulted in identifying that cattle and financial help for the reconstruction of houses were seen as an important form of reparation.

Ms Ruiz Verduzco recalled that the modalities of reparations that have been applied by the judges of the ICC are in line with the international human rights framework and include compensation, restitution, rehabilitation and satisfaction. She elaborated on the specific measures adopted and implemented in cases before the ICC, which have included collective as well as individual reparations, and modalities such as medical, psychological and socio-economic rehabilitation, symbolic recognition, compensation, and the restoration of destroyed monuments.

Ms Ruiz Verduzco highlighted the staggering numbers involved in the reparative aspect of the ICC's mandate, which reflect the magnitude and complexity of the crimes under its jurisdiction: the cases resolved so far have ranged from 297 victims and a \$1 million liability in the *Katanga* case to an estimated number of 7,500 victims and a \$31.3 million liability in the *Ntaganda* case. Victims constitute vulnerable groups including former child soldiers or victims of sexual violence. The pending *Ongwen* case may involve yet a far higher number of victims, which puts increased pressure on the TFV in its role as fund mobiliser. Current programmes require EUR 3 to 4 million per year to be implemented.

A fundamental challenge in implementing reparations is how to measure their impact, or even agreeing on what impact means. Should one focus on producing a tangible output as fast as possible? Or should emphasis be placed on integrating the victims as thoroughly as possible in the process? A balance has to be struck between the speed and the thoroughness of the process.

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The third speaker in Session 2 was Judge Rodrigo Mudrovitsch of the Inter-American Court of Human Rights. He started by underscoring that the reparations doctrine is a distinctive aspect of the Inter-American Court's jurisprudence, and it has had a significant impact on international human rights law. The right to reparation holds a dual dimension: it is an obligation of the State arising from its international responsibility, but also a fundamental right of the victims. This underlines a paradigm shift indicating that States are no longer the only subjects of international law.

Determining the most adequate form of reparation for victims is a major challenge the Inter-American Court faces in its judgments. Judge Mudrovitsch noted a general movement in international practice from economic compensation to a more comprehensive approach that considers *integral reparations*.

He elaborated on the distinct features of six different categories of reparation measures mandated by the Inter-American Court: (1) restitution, (2) rehabilitation, (3) satisfaction, (4) guarantees of non-repetition, (5) obligation to investigate and punish, and (6) compensation, and reimbursement of costs and expenses.

Judge Mudrovitsch said the judgments of the Inter-American Court of Human Rights have benefitted thousands of people on an individual dimension, but they have also had an impact on a collective dimension, promoting legislative reforms, educational campaigns, and social programmes relevant for vulnerable populations.

He concluded by stating that the impact of the integral reparation has been profound in the Americas, serving as a catalyst for social change and a guarantee against the repetition of violations, while empowering victims to have a voice and seek redress.

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The final introductory speaker in Session 2 was Lady Justice Stella Isibhakhomen Anukam, Judge of the African Court on Human and Peoples' Rights. She started by noting the significant similarity of the experiences of the African and the Inter-American human rights courts on the topic of reparations.

The African Court on Human and Peoples' Rights has over time built a very robust framework, which covers all the forms of reparations enumerated above. The Court recently undertook an in-depth study on the question of reparations and adopted comprehensive reparation guidelines, a living document which facilitates the assessment and determination of reparation awards. The Court always seeks to ensure that reparation awards are adequate, prompt, sufficient and inclusive, as well as proportional to the gravity of the violation and the harm suffered.

While the main objective of reparations is to restore the victim to the position preceding the harm suffered, Justice Anukam noted they also have a deterrent effect, preventing the recurrence of violations, and serve to address structural issues through institutional and legal reforms. She highlighted a number of cases which illustrated this point.

In the practice of the African Court on Human and Peoples' Rights, the onus is always on the applicant to provide evidence of the prejudice suffered, particularly for material damages; however, with regard to moral damages, the Court has held that the requirement of proof is not strict, since it is presumed that there is a prejudice caused when violations are established.

The African Court has established that, apart from individuals, victims may also be an entire community, people or groups with a common identity or distinguishing characteristics. Expert reports, often anthropological and sociological in nature, illuminate the specific harms endured by indigenous communities, helping the Court value damages not just in economic terms, but also in the loss of cultural heritage and ancestral displacement.

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During the open discussion, it was noted that the standard of proof in reparation proceedings is generally lower than in criminal proceedings. An example was given of a civil law

jurisdiction where, even if the criminal trial ends in an acquittal on the basis of the standard of *beyond reasonable doubt*, the court can order reparations to the victim based on civil proceedings standards. The *jus cogens* nature of the prohibition of torture was mentioned as being significant for the ability of victims to seek compensation for the harm suffered as a result of this crime.

There was discussion on the level of state compliance with the decisions of human rights courts, which differs between regions. Human rights courts typically have some means of monitoring compliance at their disposal. In some instances, there has been significant pushback from States that were found to have violated their obligations and were ordered to provide reparations.

It was explained that the ICC has developed principles on reparations under article 75 of the Rome Statute through its caselaw, rather than in the abstract. Generally speaking, the latest reparation order is the most authoritative in this respect, but there is certain leeway which allows a Chamber to navigate between doctrinal clarity and pragmatism in individual cases.

The point was made that judges are not sociologists or psychologists, and as such, they can benefit tremendously from the assistance of experts when assessing the harm suffered by victims. With respect to the implementation of reparations at the ICC, it was stressed that experts are needed on the ground to deliver for instance medical or psychological assistance and if such expertise is not readily available, it has to be created or brought from elsewhere by the Trust Fund for Victims.

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In his closing remarks, the ICC President thanked all speakers and participants for their contributions. He underlined that those who apply international law cannot work in isolation, and he called upon everyone to continue sharing ideas and collaborating in a spirit of collegiality and solidarity.



SECURING MEANINGFUL JUSTICE FOR VICTIMS – MODELS AND EXPERIENCES

19 JANUARY 2024 | The Hague, The Netherlands

CONCEPT NOTE

The purpose of the International Criminal Court's ("ICC", "Court") annual Judicial Seminar is to provide a space for a frank exchange of views on topical issues in the international criminal justice system. The participants of the Judicial Seminar are judges of the ICC, senior judges of the national jurisdictions of the States Parties to the Rome Statute, as well as senior judges of international and regional courts. The Judicial Seminar is organized with the financial support of the European Union.

The 6th Judicial Seminar of the ICC, taking place on 19 January 2024, will focus on the role and the rights of victims in the context of judicial responses to international crimes, at the ICC as well as in other jurisdictions, notably national and regional courts. As such, the Seminar aims to facilitate the cross-pollination of ideas and the dissemination of good practices between jurisdictions.

Unlike previous international criminal tribunals, where the role of victims was largely limited to being witnesses in a case, at the ICC, victims are given the right of participation in the proceedings through legal representatives and may also be awarded reparations for the harm they have endured. The ICC's Trust Fund for Victims collects donations from States and private entities to allow such reparations to be implemented even when the convicted persons lack the resources to fund them.

These aspects of the ICC's legal system, as defined in the Rome Statute, the Court's founding treaty adopted in 1998, have been widely heralded as a major step forward in offering victims tangible redress through international criminal justice, by combining retributive and restorative elements of justice and by placing special emphasis on victims as stakeholders of the justice process.

The 6th Judicial Seminar will shed light on the ICC's practice thus far in applying the provisions of the Rome Statute on victim participation and reparations. With the implementation of reparations having been recently finalised for the first time in one of the Court's cases while ongoing in three others, and more than 25,000 victims having participated in the Court's proceedings so far through legal representatives, it is an opportune time to take stock of concrete experiences in these important areas of the ICC's mandate.

The Seminar equally aims to explore the experiences of other courts and jurisdictions in the areas of victims' participation in proceedings and the provision of reparations or compensation to victims as a form of redress for the harm they have suffered as a consequence of crimes committed against them.

Indeed, in the spirit of the principle of complementarity enshrined in the Rome Statute, the ICC is a court of last resort, while national jurisdictions have primary jurisdiction over the genocide, crimes against humanity, war crimes and the crime of aggression. Regional courts – including human rights courts – and hybrid tribunals can also play a key role in ensuring redress for victims of large-scale atrocities.

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The first session of the Seminar will focus on the topic “**Procedural status of the victim in criminal proceedings**”. The session will begin with a presentation on how the ICC has so far interpreted and applied the provisions on the Rome Statute relating to the participation of victims, in particular article 68(3) of the Rome Statute and rules 89-93 of the ICC’s Rules of Procedure of Evidence. Concrete examples will be given to illustrate how these provisions have played out at the different stages of the ICC’s proceedings, from pre-trial to trial, reparations and appeals.

The session will continue with presentations on the role and rights of victims in two national jurisdictions, one of them a common law country and the other a civil law country, to give a perspective on the diversity of approaches where the role of victims is concerned.

After this, the floor will be opened for general discussion, during which the Seminar participants may make interventions highlighting the provisions applicable and practices established in their own jurisdictions as well as make observations on similarities or differences between legal systems and what lessons learned might be useful to exchange across jurisdictions.

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The second session of the Seminar will be devoted to the topic “**How to determine the most adequate form of reparations for victims?**”. This session will look at concrete cases in which reparations have been ordered by the ICC, discussing how the Court’s judges have established principles relation to reparations pursuant to article 75 (1) of the Rome Statute, what are the key elements of reparations orders issued by Trial Chambers, and how the practical implementation of the reparation orders has been conceived and carried out by the ICC’s Trust Fund for Victims.

The session will further benefit from presentations on the experiences of two prominent regional courts – the Inter-American Court of Human Rights and the African Court on Human and People’s Rights. The jurisprudence of the former, in particular, has strongly influenced the practice of the ICC, which demonstrates the importance of dialogue between criminal justice practitioners and human rights institutions in the area of victims’ reparations.

Again, after the introductory presentations the floor will be opened for general discussion, giving the Seminar participants an opportunity to share relevant experiences from their own jurisdictions, to and identify any lessons learned, as well as compare different approaches and make suggestions for the exchange of good practices between jurisdictions.

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To allow for a candid and open exchange of views between judges, the Judicial Seminar will not be a public event, and discussions will take place under Chatham House rules. Accordingly, while a report reflecting the content of the conversations will be produced and made public, no statements will be attributable to individual participants, except for summaries of the introductory remarks listed on the programme.



6th Judicial Seminar of the International Criminal Court (ICC)

SECURING MEANINGFUL JUSTICE FOR VICTIMS – MODELS AND EXPERIENCES

19 JANUARY 2024 | The Hague, The Netherlands

PROGRAMME

11:15-11:25	<p>OPENING REMARKS</p> <ul style="list-style-type: none"> Judge Piotr Hofmański, President, ICC
11:25-12:45	<p>Session 1: PROCEDURAL STATUS OF THE VICTIM IN CRIMINAL PROCEEDINGS</p> <p>Introductory presentations:</p> <ul style="list-style-type: none"> Procedural status of the victim at the International Criminal Court <i>Judge Miatta Maria Samba, ICC</i> The role of victims in Canadian criminal proceedings <i>The Right Honourable Richard Wagner, Chief Justice of Canada</i> Status of the victim in trials for international crimes: the Swedish experience <i>Judge Tomas Zander, Stockholm District Court (via remote connection)</i> <p>Followed by open discussion among all participants of the Seminar.</p>
12:45-13:30	<p><i>Buffet lunch</i></p>
13:30-15:10	<p>Session 2: HOW TO DETERMINE THE MOST ADEQUATE FORM OF REPARATIONS FOR VICTIMS?</p> <p>Introductory presentations:</p> <ul style="list-style-type: none"> Judicial process of determining reparations at the ICC <i>Judge Péter Kovács, ICC</i> Implementation of reparation orders in the ICC system <i>Ms Deborah Ruiz Verduzco, Executive Director, Trust Fund for Victims (ICC)</i> Experiences of the Inter-American Court of Human Rights <i>Judge Rodrigo Mudrovitsch, Vice-president of the Inter-American Court of Human Rights (via remote connection)</i> Experiences of the African Court on Human and Peoples' Rights <i>Lady Justice Stella Isibhakhomen Anukam, Judge of the African Court on Human and Peoples' Rights</i> <p>Followed by open discussion among all participants of the Seminar.</p>
15:10-15:15	<p>CLOSURE OF THE SEMINAR</p> <ul style="list-style-type: none"> Judge Piotr Hofmański, President, ICC

The International Criminal Court expresses its appreciation to the European Union for the financial support provided for the organization of the Judicial Seminar.