



Mr. Luis Moreno-Ocampo

Prosecutor of the International Criminal Court

*The role of International Judicial Bodies in Administering the
Rule of Law*

Qatar Law Forum

Remarks

Doha, Qatar

30 May 2009

Excellencies, Ladies and Gentlemen

I thank his highness the Emir of Qatar for inviting me to consider with you how to ensure justice in the 21st century.

This is a unique opportunity. We here are representatives of a variety of national, regional and international institutions. We can learn from each other how to integrate efforts. How can we face the challenges of our era?

How to ensure local and global justice?

Justice that integrates all legal traditions;

Justice without double standards;

Justice that respects both the rights of individuals and corporations; justice that respects the role of States.

I have the privilege and the responsibility to be the first Prosecutor of the first permanent and independent ICC, created by the Rome Statute. I have to apply this new law. The goal of the Rome Statute is to end impunity for the most serious crimes of international concern (genocide, crimes against humanity and war crimes) and to contribute to the prevention of such crimes.

To achieve its goal, the Rome Statute created a novel system of interaction of States, international organizations and a permanent International Criminal Court. A system based on the principle of complementarity. Complementarity means that national judicial systems are mainly responsible to investigate and prosecute, they have primacy. My duty is not to intervene when the national system carries out genuine national proceedings.

I would like to describe the design of this innovative institution and how we implemented our mandate during the 6 years of operation.

It took 130 years to transform the idea of an international criminal court into a reality. In 1873, one founder of the International Committee of the Red Cross (ICRC) proposed the creation of a permanent and impartial international criminal court. He noted that *“a treaty was not a law imposed by a superior authority on its subordinates [but] only a contract whose signatories cannot decree penalties against themselves since there would be no one to implement them. The only reasonable guarantee should lie in the creation of international jurisdiction with the necessary power to compel obedience”*.

After the 1st World War, the Treaty of Versailles established an international obligation to prosecute the Kaiser. But the Netherlands offered him asylum and there was no prosecution.

The atrocities committed during the 2nd World War created a momentum to establish a new international institutional setting. With the Nuremberg Trials, for the first time, those who committed massive crimes were held accountable before the international community.

Nuremberg was a landmark. However the world was not ready to transform such a landmark into a lasting institution, even though the Genocide Convention adopted in 1948 made reference to the creation of a permanent international criminal court.

During the following years massive crimes were committed around the world with total impunity; colonialism and apartheid ruled.

During the last decade of the 20th century two different paths were developed to confront such massive atrocities.

On the one hand, national judges started applying universal jurisdiction. The most famous case of universal jurisdiction was triggered by a national judge from Spain requested former President of Chile, Augusto Pinochet's extradition as he was traveling in the UK.

On the other hand, international tribunals were created with specific jurisdiction. In 1993 the UN Security Council decided to create the *ad hoc* Tribunals for the Former Yugoslavia, and in 1994 for Rwanda, and after that hybrid tribunals were created in Sierra Leone and Cambodia. All these efforts paved the way for the adoption of the Rome Statute in 1998. A same standard of law for the entire world was established.

Ladies and Gentlemen,

In Rome in 1998, 160 countries discussed for 5 weeks. Finally they adopted the Rome Statute. International justice was not a moment in time any longer, nor an *ad hoc* post conflict solution: it became an institution.

The Rome Statute integrated national states and an independent Court into a global criminal justice system to prevent massive crimes:

- It established that genocide, crimes against humanity, war crimes and the crime of aggression are crimes committed against the international community;
- Substantial law was codified in one detailed text; the content of different international conventions such as the Genocide Convention and the Geneva Conventions have been incorporated; elements of the crimes have been meticulously defined;
- Different legal and procedural traditions have been integrated into a new international model; victims have been given the right to participate in proceedings; Arab lawyers contributed immensely to the Statute. Professor Cherif Bassiouni of

Egypt chaired the drafting committee, Prince Zeid of Jordan, Professor Shukri of Syria played a key role. Eleven signed the Rome Statute. Three ratified;

- The scope of ICC jurisdiction reaches beyond any national or regional boundary; where the ad hoc tribunals were each limited in scope to a particular territory, the states party and the ICC integrate a worldwide criminal justice system. Its jurisdiction extends over crimes committed on the territory of 108 States Parties but also over crimes by the nationals of those States Parties anywhere in the world; it could extend to the entire world as the United Nations Security Council can refer any situations to the Court, and Non States Parties can lodge an *ad hoc* declaration accepting jurisdiction;
- Even more important, and the object of strong debate in Rome was the decision of States to give the Prosecutor the ability to trigger independently the jurisdiction of the Court. Such a provision, which allows the Court to act without any request from States or the UN Security Council, ensures that the law will prevail over any political decision. This is a key, defining provision for the new legal framework;
- States accepted that they have a duty to prosecute these crimes within their own borders. But in addition, they accepted to be part of a novel system of international cooperation. They committed to support a permanent International Criminal Court whenever and wherever the Court decides to intervene.

States demonstrated their understanding and firm support to this new design by the tremendous speed of the ratification process; it took just 4 years. On the 1st of July 2002, more than 60 states ratified and the Rome Statute entered into force.

In March of 2003, 18 judges representing five continents were sworn in. I started my tenure on the 16th of June 2003.

Over these 6 years, we have opened investigations in the gravest situations under our jurisdiction. The Democratic Republic of Congo, Northern Uganda and Central Afri-

can Republic referred situations to my Office, the UN Security Council referred Darfur. Before start any investigation we confirmed the inexistence of national proceedings. We collected evidence during ongoing conflicts against those most responsible for massive crimes. Based on our evidence the Judges issued 13 arrest warrants and one summons to appear; the leaders of four different militias are detained in The Hague; the leader of a rebel group from Darfur appeared voluntarily. The first trial started in January. The second one is scheduled for September this year.

We also analyzed the situation in Venezuela and the activities of nationals of 25 States Parties involved in Iraq. We are currently monitoring 5 situations in three different continents: Colombia, Kenya, Afghanistan, Ivory Coast and Palestine. International and regional organizations working to end conflicts are factoring in our judicial activities; the Organization of American States is sharing with us their own work on Colombia; the Arab League has sent us information on Palestine; the AU Panel for Kenya chaired by former Secretary General Kofi Annan has made the ICC part of a comprehensive solution for Kenya.

The ICC has made the law a working system. Its preventative impact around the world is developing.

Since the Court entered into operation, the number of States Parties has continued to grow. States from different regions evaluated the treaty and its implementation and decided to ratify it. New states are going to join the Court in few weeks. UN Security Council Resolution 1593, referring the Darfur case to the Prosecutor, confirmed this recognition, which is even more remarkable because the recognition included the decision of non-States Parties.

In addition, there are almost 50 states that have now passed some domestic laws implementing the ICC rules. One of the most interesting achievements of the Rome Stat-

ute is that armies around the world are adjusting their regulations to avoid the possibility of committing acts falling under ICC jurisdiction. The law makes the difference between a criminal or a police, an enemy combatant or a soldier.

Political leaders and negotiators in the context of international conflicts are learning to manage international conflicts respecting the new framework established by the Rome Statute. There are continuous discussions about how to execute the arrest warrants of individuals protected by their own governments or by their own armies. It is difficult, but they are adjusting.

Ladies and Gentlemen,

The Rome Statute is more than a Court; it is a new and emerging global system of justice based on complementarity and aiming at establishing one basic standard: no massive atrocities.

The Rome Statute is not just for the judges and defendants. In 2003 an Australian military pilot conducting operations in Iraq realized that if he executed the order received, he could be prosecuted in accordance with the Rome Statute. He returned to his base without dropping the bombs.

Thank you.