



Mr. Luis Moreno-Ocampo

Prosecutor of the International Criminal Court

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Global Futures, Global Risks: Trends, Needs, Opportunities, Crises

Opening Keynote Address

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Ladies and Gentlemen,

I have the privilege to be the first Prosecutor of the International Criminal Court. My duty is to select, to investigate and to prosecute the most serious crimes of international concern, my duty is to be impartial and independent. My Office intervenes when no state is conducting national investigations and when violence is still ongoing.

I would like to summarize our main activities and challenges but I would like also to take this opportunity to have a dialogue about our common challenges. The world today is facing global problems. We need to improve global governance, but we do not have global government. Who is in charge? How are the rules defined? How are the conflicts solved? Louise Blouin Mac Bain had the creativity to put all of us together. Currency and criminal justice were key characteristics of national sovereignty. Now countries are relying on the IMF to create a form of global currency. Now countries are relying on the ICC to conduct criminal procedures and, as a consequence of a UN Security Council referral of the Darfur situation to the Court, there is now an arrest warrant against the President of the Sudan, Omar Al Bashir.

We have to learn more about each other. My Office has to know more about economic development. In the DRC, the control of gold and other mines is at the root of the violence. In the Sudan, the sharing of resources between the center and the periphery has historically driven violence. So as a Prosecutor mandated to prevent crimes, I shall be interested in your efforts to stabilize economies. And I believe that as institutions regulating financial and trade flows, you should know more about the crimes when you decide on economic reforms.

Something new is happening, and there is not yet a clear framework.

Let me start. We are prosecuting leaders of armed groups from Uganda and the DRC. They abducted thousands of children and raped thousands of women and girls. They used children as sex slaves and killers. Four top leaders of these militias are now in custody in the ICC detention center, going to trial.

We are prosecuting the President of the Sudan Omar al Bashir and Ahmed Harun, currently governor of South Kordofan, an important and rich state in the Sudan. Over the last 6 years, their forces attacked Sudanese citizens, millions of unarmed civilians, the same people that they, as state leaders, should protect. First they were attacked in their villages, forcing them into camps. Now 2.5 million people are attacked in the camps for displaced persons.

We are also prosecuting Darfuri rebels who attacked peacekeepers of the African Union.

All these activities are not the consequence of judicial activism. The Court has a legal mandate established by a treaty, the Rome Statute, a treaty adopted by 120 states in Rome in 1998, signed by 139 states, and ratified today by 110 states from 5 continents. They decided to end impunity for those crimes that we have thought, over and over, would never happen again, only to see them occur, again and again: genocide, crimes against humanity and war crimes. The Rome Statute defined these crimes in detail, and created for each state party a duty to punish them, in order to “contribute to the prevention” of such crimes. States accepted that the Court would intervene when one of those states fails to act, and they committed themselves to support the Court for such interventions. As you see the Rome Statute created more than a Court. It is a new design, a global justice system based on a combination of national states and a permanent and independent international Criminal Court.

It is a 21st century design. A global justice system based first on the actions of national states within their own territories and after in the support that they provide to the Court whenever or wherever the Court decides to act. The ICC might be the face of the system, but its strength lies in the commitment of states.

Some people are troubled because criminal justice was not used in the past to manage international conflicts. Some people think this is naïve thinking. However, the drafters of the Rome Statute were not naïve, they were the ultimate realists.

During their lifetime, they watched the Khmer Rouge kill millions, they let Srebrenica happen, and they let Rwanda happen. They failed the “never again” promises of their fathers. During their careers as political leaders, diplomats and negotiators, they tried every solution: they shook hands with devils, sent them off to golden exiles, tried to appease them with promises of immunity, power and wealth. Each time they gambled on impunity and each time they lost. They learned the need to adjust their tactics to reach a lasting solution.

As any Court, as the WTO, the Court is solving disputes and establishing rules. The Court’s decisions are felt well beyond the courtroom, they reverberate throughout the State Parties and beyond. The Court is putting the rules into the reality and providing incentives to act.

The simple monitoring of allegations of crimes that my Office is conducting in Afghanistan, Colombia, Cote d’Ivoire, Kenya, and Georgia to decide if an investigation shall be opened is promoting national efforts to do justice. Colombia is prosecuting hundreds of politicians, paramilitaries and guerrillas thus avoiding

the intervention of the Court. In Kenya, the mere statement by the ICC that we could have jurisdiction promoted national discussions about accountability for the crimes committed during the last elections. Impunity is no longer an option.

How does this connect with security? Let me mention two aspects.

First, Security requires legitimacy. States forces have the monopoly on violence but they have to respect the law. The most important outcome of the court to date is that armies around the world, even from non-signatory countries, are adjusting their standards and rules of engagement to the Rome Statute. We are increasing the legitimacy of states forces. This is the way to prevent crimes. The law outlines the difference between a soldier or a terrorist, a policeman or a criminal. As soon as war crimes are prohibited in policy directives and military plans, there is no risk for national armies. As soon as domestic judiciaries are mandated and equipped to address crimes committed in contravention of those policy directives and military plans, there is no reason why the ICC would step in. The Court will respect any genuine national effort to investigate and prosecute crimes.

Second, the world is still using national systems to control transnational criminality. Militias in DRC receive weapons from Ukraine, and have business in Hong Kong or Antwerp, where part of the illegally exploited national resources that fuel the conflict are traded.

There are difficulties in sharing information about criminal activities. Europol in The Hague has a building with 28 different rooms, with 28 different national databases. Even within a country there are similar problems, The New York police had to develop its own international department to address international crimes in this city.

The Rome Statute is offering a different model, based on cooperation. My investigation teams are working with police and prosecutors from all over the world. We are sharing information, we are trying to connect dots, to unveil and disrupt the activities of the different networks of arm suppliers and illegal businesses who are promoting the crimes under our jurisdiction.

Let me present the similarities between WTO and ICC.

When I was appointed, there were serious controversies about the Court and its viability. A friend of mine who had worked for 50 years in international trade issues advised me not to worry: he told me, if you apply the law, persist in your independent work and show its usefulness, you will receive support. He referred to his GATT experience: The GATT started as a provisional system, with many countries including the US against it. The GATT had setbacks, but it prevailed, and

evolved into the WTO. The WTO's power is based on its legitimacy and impartiality.

110 states accepted the jurisdiction of the ICC through ratification. But in a way similar to the WTO jurisdiction, we also have a system allowing states not party to the statute to work with us on a case by case basis. Non state parties such as Russia and regional organizations such as the Arab League are coming to the ICC.

Russia, a non-state party, has fully factored in the Court, trying to take the Rome Statute into consideration when it planned its military campaign in Georgia. Russia has now sent more than 3,000 communications to the Court endeavouring to demonstrate that alleged war crimes were committed by Georgia.

This year, the Palestinian National Authority accepted the jurisdiction of the Court, affirmed that it had the necessary attributes to seize our jurisdiction and is to provide a report supporting its position. A few months ago the Arab League sent to my Office its first ever fact finding report on crimes committed in Gaza.

WTO and the ICC will succeed because they are providing an important service: to refine global rules, set limits and contribute to solving conflicts.

There is a new world and we have to design the institutions that will manage it. As international organizations we have to complement national states to face the new global challenges but also we have to learn from each other and engage with civil society. I thank you for this opportunity to be part of this conversation.