



The Office of the Prosecutor

Report

on

Prosecutorial Strategy

14 September 2006

The Hague

Introduction to the Report

After three years of intensive activities the International Criminal Court (“Court”) is becoming a multifaceted organisation in which judges will issue rulings, victims will participate in proceedings and, in due course may receive compensation and new investigations will be opened. During the coming years the Office of the Prosecutor (“Office”) will continue to endeavour to improve the quality of its work.

The Office will take into consideration the lessons learned during the past three years to achieve its new goals and, after extensive consultation with its own staff and Court-wide senior management, has developed its *Prosecutorial Strategy*.

The formulation of the Prosecutorial Strategy will allow the Office to enhance its dialogue with the other organs of the Court, States Parties, international organisations, non-governmental organisations (“NGOs”), academia and other stakeholders in order to adjust its Prosecutorial Strategy in light of their comments and to create a common understanding of what is expected of the Office over the next three years.

The evolution of the Office’s work has to be accompanied by the evolution of the States Parties’ activities. During and after the consultation process the Office will be grateful to hear from States Parties and other partners their own plans on how to achieve the goals of the Rome Statute (“Statute”), including cooperating with the Office and the Court. The support of States Parties’ will be needed in all areas, notably in securing suspects against whom arrest warrants have been issued. Without international cooperation to secure arrests the Office will be unable to fulfil its mandate. The Office’s success will therefore necessarily be intertwined with the work of its partners.

Report on Prosecutorial Strategy

Summary of the Strategic Objectives

This Prosecutorial Strategy is part of the Court's Strategic Plan. The Office has formulated **five strategic objectives** for the coming three years that will be further explained.

- a) The **first objective** is to further improve the quality of the prosecution, aiming to complete two expeditious trials.
- b) The **second objective** is to conduct four to six new investigations¹ of those who bear the greatest responsibility in the Office's current or new situations.
- c) The **third objective** is to gain the necessary forms of cooperation for all situations to allow for effective investigations and to mobilize and facilitate successful arrest operations.
- d) The **fourth objective** is to continuously improve the way in which the Office interacts with victims and addresses their interests.
- e) Finally, the **fifth objective** is to establish forms of cooperation with states and organisations to maximize the Office's contribution to the fight against impunity and the prevention of crimes.

¹ Investigations to be initiated after June 2006.

Part I: Relation of the Strategic Objectives to the Court’s Strategic Plan

1) The Court has adopted a “One-Court” approach in Strategic Planning while nevertheless respecting the independence of the individual organs. The five Office objectives align with the first and second ICC strategic goals. The third strategic goal “a model for public administration” is shared.

Table 1-Relationship between the Prosecutorial Strategy and the Court’s Strategic Plan

ICC Strategic Goals	Prosecutorial Strategy – Objectives
1 Quality of Justice Conduct fair and expeditious public proceedings in accordance with the Rome Statute and high legal standards, ensuring full exercise of the rights of all participants. <i>Overarches ICC objectives 1-5 and 21-22</i>	I To further improve the quality of the prosecution, aiming to complete two expeditious trials.
	II Conduct 4 – 6 new investigations of those who bear the greatest responsibility in the current or new situations.
	IV Continuously improve the way in which the Office interacts with victims and address their interests.
2 A Well-Recognised and Adequately Supported Institution Further enhance awareness of, effect a correct understanding of and increase support for the Court. <i>Overarches ICC objectives 6-9 and 23-26</i>	III For all situations gain the necessary forms of cooperation to allow for effective investigations, and mobilize and facilitate successful arrest operations.
	V Establish forms of cooperation with States and organisations to maximize the Office’s contribution to the fight against impunity and the prevention of crimes.
3 A Model for Public Administration Excel in achieving desired results with minimal resources through streamlined structures and processes while maintaining flexibility and guaranteeing accountability. <i>Overarches ICC objectives 10-20 and 27-30</i>	

Part II: Principles of the Prosecutorial Strategy

2) At the core of the Prosecutorial Strategy lie three essential principles that the Office has developed during its first three years of work: positive complementarity, focused investigations and prosecutions, and maximizing the impact.

- a) With regard to **complementarity**, the Office emphasizes that according to the Statute national states have the primary responsibility for preventing and punishing atrocities in their own territories. In this design, intervention by the Office must be exceptional – it will only step in when States fail to conduct investigations and prosecutions, or where they purport to do so but in reality are unwilling or unable to genuinely carry out proceedings. A Court based on the principle of complementarity ensures the international rule of law by creating an interdependent, mutually reinforcing international system of justice. With this in mind, the Office has adopted a *positive approach* to complementarity, meaning that it encourages genuine national proceedings where possible; relies on national and international networks; and participates in a system of international cooperation.
- b) The second principle guiding the Prosecutorial Strategy is that of **focused investigations and prosecutions**. Based on the Statute, the Office adopted a policy of focusing its efforts on the most serious crimes and on those who bear the greatest responsibility for these crimes. Determining which individuals bear the greatest responsibility for these crimes is done according to, and dependent on, the evidence that emerges in the course of an investigation. When the Court does not deal with a particular person, it does not mean that impunity is thereby granted – the Court is complementary to national efforts, and national measures against other offenders should still be encouraged. The Office also adopted a “sequenced” approach to selection, whereby cases inside the situation are selected according to their gravity. Although any crime falling within the jurisdiction of the Court is a serious matter, the Statute clearly foresees and requires an additional consideration of “gravity” whereby the Office must determine that a case is of sufficient gravity to justify further action by the Court. In the view of the Office, factors relevant in assessing gravity include: the scale of the crimes; the nature of the crimes; the manner of commission of the crimes; and the impact of the crimes.² The policy also means that the Office selects a limited number of incidents and as few witnesses as possible are called to testify. This allows the Office to carry out short investigations and propose expeditious trials while aiming to represent the entire range of criminality. In principle, incidents will be selected to provide a sample that is reflective of the gravest incidents and the main types of

² Draft Policy Paper on Selection Criteria.

victimization. Sometimes there are conflicting interests which force the Office to focus on only one part of the criminality in a particular conflict. The approach used in the selection of incidents and charges is one of the measures taken to address the security challenge and assists the Court in operating cost efficiently. Finally, it is part of this policy to request arrest warrants or summons to appear only when a case is nearly trial-ready in order to facilitate the expeditiousness of the judicial proceedings.

- c) The third principle guiding the Prosecutorial Strategy is **to maximize the impact** of the activities of the Office. As noted in the Preamble of the Statute, the Court has a role in contributing to the prevention of future crimes. The Office has to maximize the impact of each of its activities, from the analysis of the information, to the beginning of the investigation, to the trial and eventual conviction. Massive crimes are planned; the announcement of an investigation could have a preventative impact. The mere monitoring of a situation could deter future crimes from being committed. It increases the risk of punishment even before trials have begun. Interestingly, this effect is not limited to the situation under investigation but extends to different countries around the world.

Based on these three principles, the Office aims to achieve the objectives mentioned.

Part III: The Objectives for the Coming Three Years

- 3) The first objective is **to further improve the quality of the prosecutions, aiming to complete two expeditious trials.**

- a) The judges are in charge of the proceedings, and will therefore make the final decisions that affect the length of the trials. However, the length of the trials will be affected by additional factors such as the quality and quantity of the evidence presented by the Prosecutor, the defence's policy and considerations for the security of witnesses. Nevertheless, the Office seeks to further improve the quality of the prosecutions in accordance with its mandate and in order to facilitate the completion of expeditious trials.
- b) It is difficult for the Office to foresee the exact number of trials in the coming years, as this is dependent on the arrests and their sequence.

However, the Office considers that at least two trials could be completed in the coming three years.

4) The second objective is **to conduct four to six new investigations³ of those who bear the greatest responsibility in its current or new situations.**

- a) As discussed for the first time in an informal meeting in New York with Legal Advisors of Ministries of Foreign Affairs in October 2005, the selection of situations raises a question which goes to the very model of the Court and the size of the budget.
- b) The Office is already operating in three situations. In addition, the Office is currently analyzing five other situations of concern, having concluded its analysis on Venezuela and Iraq. These include a State referral from the Central African Republic, and a declaration of acceptance of jurisdiction from the Côte d'Ivoire.
- c) The Office regularly collects information in order to assess crimes allegedly committed that could fall under the jurisdiction of the court and that could be admissible. Based on this assessment the Office foresees that the number of cases that could be admissible in the next three years is between 4 and 6.
- d) The Office is confident that it can carry out these investigations with the three teams that currently exist. This is possible as a result of the rotational model employed by the Office, whereby joint teams move to different situations or cases. If an unforeseen situation or case needs to be opened, for instance as a consequence of a referral by the UN Security Council of a non-State Party situation, the Office can resort to the contingency fund. If this is not sufficient, the Prosecutor will ask the Assembly of States Parties if it is willing to provide additional funds.
- e) The Office will endeavour to do a selection of cases that represent the entire criminality and modes of victimization. The Office will pay particular attention to methods of investigations of crimes committed against children, sexual and gender-based crimes.

³ Investigations to be initiated after June 2006.

5) The third objective is to **gain the forms of cooperation necessary to mobilize and facilitate successful arrest operations.**

- a) While the Court does not have a mandate to “arrest” by itself, the experience gained so far demonstrates that the Office can and should deploy substantial efforts to gathering information on the whereabouts of suspects, galvanizing support and cooperation for arrest and surrender, and promoting coordination among national and international parties potentially involved in a successful arrest.
- b) Even in relatively simple cases, the Office will require significant cooperation; for example, although Thomas Lubanga Dyilo was already in custody in the Democratic Republic of the Congo (“DRC”), his transfer to the Court required cooperation not only from the DRC authorities but also from French authorities, who provided an airplane to transport him to The Hague and from the UN Security Council, which quickly lifted the travel ban against him.

6) The fourth objective is to **continuously improving the way in which the Office interacts with victims and addresses their interests.**

- a) The Office has the obligation to assess the interests of victims as part of its determination of the interests of justice under Article 53 and Rule 48. Furthermore, the Statute provides for a generous scheme of victims participation during the judicial proceedings as a way of ensuring that their views and concerns are taken into account.
- b) For these reasons and in light of the Office’s past experience, it is clear that it is necessary to systematically seek the views of victims and local communities at an early stage, before an investigation is launched, and to continue to assess their interests on an on-going basis.
- c) This systematic interaction will also allow for adequate outreach among local communities in order to enhance the understanding and impact of the Office’s activities.
- d) The Office will develop clear protocols in order to ensure that at every stage of the investigation and trial, the Office will consult with the relevant victims and take their interests into account.

7) The fifth objective is to **establish forms of cooperation with states and organisations to maximize the Office's contribution to the fight against impunity and the prevention of crimes.**

- a) The Office is committed to fostering the type of international cooperation that will assist states and international organisations to prevent and resolve conflicts producing massive crimes and address impunity for these crimes. Depending on the situation, this may involve international cooperation for the promotion of national proceedings, traditional mechanisms or other tools, with the involvement of a variety of actors.
- b) Through a combination of cooperation and analysis work the Office intends to identify in a more systematic manner the potential deterrent impact of the Office's activities, starting as early as the analysis phase. Efforts will be made to reinforce such impact by aligning the strategies of the Office with broader efforts aimed at stabilizing situations of violence and crime. This will require frequent consultations with an expanding set of interlocutors, in the areas of rule of law, conflict resolution, peace and security, as well as humanitarian action.

Part IV: External Relations and Communications

8) The Office will continue expanding its network of contacts with non-States Parties, international organisations and NGOs aimed at fostering a supportive environment. The relationship with the United Nations needs to be consolidated, and in the case of some agencies, expanded. An important focus in the coming period will be to strengthen the relationship with regional organisations, in particular the African Union and the European Union, based on tailored plans to that effect. The six-monthly policy dialogue with the NGO community will continue, in addition to the Office's contacts with individual NGOs.

Part V: Management of the Office

9) The Office fully subscribes to the Court-wide strategic goal for the Court to be "a model for public administration with well-qualified and motivated staff". The Court has consolidated its administrative functions and the Office relies primarily on the Registry's capacity as a service provider.

10) To address the tension between independence and a common administration, the Office has worked with the other organs of the Court to establish a division

of tasks that will contribute to cohesive operations while enabling the Prosecutor to maintain its independence and the Registry to preserve its neutrality. Increased clarity and reliability in the cooperation between the Office and the Registry is anticipated with the implementation of the Court strategic plan, implemented through service level agreements between the service providers and requesting entities within the Office.

11) Internally, the Office aims to stabilize its structural design, keeping the flexibility needed to address different situations around the world but ensuring consistency.

12) The Office will also strive to promote a healthy work-life balance. Attention will be given to personal development, through training opportunities, coaching and feedback. The Office will nurture a working environment with minimal bureaucracy, where diversity and initiative are celebrated, and in which staff feel responsible and valued.

Part VI: Evaluation

13) The Office is aiming to establish a clear set of performance indicators and evaluation processes. Because trials have yet to commence, it is too early to begin truly judging the performance of the Office in all its aspects, but the third-year mark is an appropriate time to commence a discussion about how best to measure the Office's activities.

14) Measuring the performance of the Office in helping to end the culture of impunity and contributing to the prevention of crimes under the Court's jurisdiction is a complex task that requires a clear evaluation of the entire Rome system.

15) Under the system of complementarity, much of the work done toward achieving the goals of the Statute may take place in national systems around the world. Thus, the number of cases that reach the Court or its judicial proceedings should not be the sole or even decisive measure of its effectiveness. On the contrary, increasing numbers of genuine investigations and trials at the national level may well illustrate the successful functioning of the Rome system as a whole.

16) Establishing a system to measure the impact of the entire Rome system is the most difficult performance indicator to develop, but remains an important one.

The Office of the Prosecutor based on the system of complementarity has to be evaluated as a piece in this development. It is crucial to start a discussion on how to conduct such an evaluation in order to align expectations and allocate resources in a rational manner. In the meantime, the Office will begin to prepare a short list of indicators to evaluate some of its activities.