

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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Lecture

*Delivering international criminal justice: how to move forward?*

*Universidad de los Andes, Bogotá, Colombia*

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Excellencies, Distinguished guests, ladies and gentlemen,

As President of the International Criminal Court, I am very pleased to address this distinguished gathering generously hosted by the University of Andes. I would like to thank the University, as well as the co-organisers, the Diplomatic Association, for providing me this opportunity.

For me, it is always a tremendous pleasure to visit a prestigious University like yours and to give a lecture at a Law School. You see, for more than 30 years I was a Professor of Law myself, first teaching at the Seoul National University and later also at the Harvard Law School, the University of Wellington and the University of Melbourne.

Since 2003 I have been a Judge of the International Criminal Court, but whenever I have the opportunity, I am happy to return for a moment to the academic world, where I always feel at home.

Informing interested audiences about the work of the Court, is also part of my duties as the President of the ICC. I am the “public face” of the Court as a whole, and in that role I undertake various efforts to raise global awareness about the ICC. Indeed that is one of the two main purposes of my trip to Colombia, and I am grateful to the organisers of this event for facilitating my task.

The other main reason why I came to Bogota was to sign an agreement on enforcement of sentences between Colombia and the ICC. This I concluded yesterday with President Santos. Your country was the first one in all of Americas to conclude this important agreement with the ICC, and I hope that others will follow this example.

Excellencies, ladies and gentlemen,

Questions of peace, human rights and the rule of law have been close to my heart since I was a child. Unfortunately, I saw many of those closest to me suffer immensely because of injustice and human cruelty. My own grandfather was severely tortured because of his participation in the Korean movement for independence.

When I was nine years old, war broke out in my home country. I was too young to be mobilised, but old enough to realise the horrors of war. For three months, during the battle for Seoul city, my family was hiding in a hot and humid underground bunker. It was my task to emerge above the ground to find food and to bring it back to the bunker. To do this, I had to walk about 16 kilometres every day. During these trips, I passed hundreds of dead bodies, lying on the streets. To this day, I can precisely remember the horrible stench of the decomposing corpses in those hot summer months.

All these experiences left a lasting impression on me and affected decisions I made during my adult life. This was one of the factors that led me to a legal career and ultimately to become a Judge of the ICC.

In my current capacity as President of the Court, I had an opportunity to visit affected communities in Uganda and the Democratic Republic of the Congo as part of ICC's outreach activities. I met with former child soldiers and other victims that were now rebuilding their lives. Some of the survivors had had their limbs, ears, nose or lips intentionally cut off.

As my own memories of wartime suffering came back to me, I had to ask myself: how can human beings be so brutal to one another? Will we ever be able to stop such acts?

Fortunately, humans do also have the capacity to learn from the past. After the Second World War, the world articulated an unprecedented claim for justice. Justice was seen for the first time as a pre-requisite for lasting peace. And from the death and destruction, a powerful movement emerged: to hold people individually accountable for the crimes they committed.

Tribunals were set up in Nuremberg and Tokyo, and perpetrators were brought to justice. In its judgment, the Nuremberg Tribunal famously stated, "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced." The seed of modern international criminal law had been planted.

The Principles of Nuremberg were codified by the International Law Commission, and the Genocide Convention, the Geneva Conventions and the Universal Declaration for Human Rights were built on the achievements of Nuremberg and Tokyo. International criminal law started to emerge with the recognition that the darkest crimes – aggression, crimes against humanity, genocide and war crimes - should be answered with fair, impartial trials.

Then, almost immediately the Cold War froze for decades the expectation of accountability for these crimes. The world was largely polarised into two opposing camps; and, as a result, there were numerous proxy wars in Asia, Africa and Latin America. Vested interests prevented the pursuit of justice where the atrocities had occurred. As a consequence, there was justice for none.

The Cold War eventually did end. Armed conflicts and atrocities still continued in many corners of the world, but now the wide majority of the international community was able to agree that concrete action had to be taken to hold the perpetrators of the most inhumane crimes responsible.

International *ad hoc* tribunals or internationalised procedures, taking various forms, were set up for the crimes committed in the former Yugoslavia, in Rwanda, in Sierra Leone, Kosovo, Bosnia, Timor-Leste, Cambodia, and Lebanon.

With an amazing speed, the new international justice movement led to the adoption of the Rome Statute in 1998 and the creation of the ICC in 2002. Let me stress that this would not have been possible without the tireless efforts of dedicated activists, diplomats, lawyers and academics from all over the world.

One of them was Arthur N.R. Robinson, the former President and Prime Minister of Trinidad and Tobago. In 1989, he tabled a proposal in the United Nations General Assembly to restart work on the creation of an International Criminal Court – a task that the International Law Commission had begun after World War II but which had died down during the Cold War. It was this proposal, made by a determined statesman from a small country that eventually led to the negotiations in Rome where the ICC's Statute was adopted.

Only two days ago, I had the privilege to meet again former President Robinson in the capital of Trinidad and Tobago, where he spoke movingly about the need for global justice for all human beings.

And that is what the ICC is about – preventing impunity for the gravest international crimes and providing justice everywhere in the world, regardless of the nationality, ethnicity or religion of the perpetrators or the victims. The crimes in the Rome Statute concern all of humanity.

Excellencies, ladies and gentlemen,

On 1 July 2002, the Rome Statute entered into force and the world's first permanent international criminal court was thus created. The Rome Statute, contains many important innovations which put the Court at the leading edge of the development of international criminal law.

Two of the most progressive features of the Rome Statute concern victim participation and reparations. This is the first international criminal court that allows victims to participate in the criminal proceedings in their own right and not only as witnesses. In the courtroom, victims are represented by lawyers that can make submissions on their behalf at all stages of the proceedings.

One of the main purposes of victim participation is to allow the victims apply for reparation for the crimes that have been committed against them. A convicted person can be ordered to pay reparations, but the ICC also has a special Trust Fund for victims that can collect donations and provide assistance and relief to victims and their communities regardless of the outcome of trials.

Furthermore, the Rome Statute gives significant attention to gender issues and the rights of children. And the Statute guarantees full respect of all internationally recognised fair trial norms and rights of the accused.

Today, the ICC is a fully functioning judicial institution. **Six situations** are under investigation or prosecution. These are: Uganda, the Democratic Republic of the Congo, Central African Republic, Darfur (Sudan), Kenya and Libya. These investigations, and the charges brought before the judges, concern shocking crimes such as genocide, mass murder, rape, use of child soldiers and so forth.

Three trials are ongoing, two of them approaching conclusion. Four more cases are in the pipeline, at various stages of procedure preceding trial. 2011 is already the ICC's busiest year ever, and the Court's work is only increasing.

In addition to the six situations under investigation, the Prosecutor of the ICC, Mr. Luis Moreno-Ocampo, has publicly said that he is conducting preliminary examinations and monitoring the developments in many other countries on several continents, including Afghanistan, Colombia, Côte d'Ivoire, Georgia, Honduras, Guinea, Korean peninsula, Nigeria and Palestine.

Let me use this opportunity to explain the way investigations can be opened at the ICC. It is the Office of the Prosecutor, an independent organ of the ICC, which conducts a preliminary examination of all situations brought to its attention.

The preliminary examination of a situation may be initiated by: first, a referral from a State Party; second, a referral by the Security Council, or third a decision of the Prosecutor, *proprio motu*, taking into consideration any information on crimes under the jurisdiction of the Court, including information sent by individuals or groups, States, intergovernmental or non-governmental organisations.

Once a situation has been thus identified, the Office of the Prosecutor will proceed to assess whether the opening of an investigation is warranted under the Rome Statute. The Prosecutor will consider first of all, whether the information available provides a reasonable basis to believe that a crime within the jurisdiction of the ICC has been or is being committed; but also, importantly, whether the case is or would be admissible under Article 17 of the Rome Statute.

And this brings us to the crucial principle of complementarity on which the whole Rome Statute system is built. The ICC is a court of last resort, and States, within their national jurisdiction, always bear the primary responsibility to ensure criminal responsibility for serious crimes of concern to the international community as a whole.

This also means that the ICC can only intervene when a State is not able, or is simply unwilling, to genuinely investigate and prosecute Rome Statute crimes under its jurisdiction.

As far as situations referred by States Parties, or by the Security Council are concerned, the Prosecutor can proceed directly to open an investigation if he considers that this is justified in light of the information available.

However, if the Prosecutor wants to open an investigation at his own initiative, meaning that the situation was NOT referred by a State Party or the Security Council, he will first have to obtain authorisation from the Pre-Trial Chamber of the ICC before he can do so. The Judges of the Pre-Trial Chamber will only authorise the opening of an investigation if they determine that there are reasonable grounds to do so.



This is one of the important checks and balances that were inserted into the Rome Statute to alleviate possible concerns about politically motivated investigations, or cases not based on proper evidence that would waste taxpayers' money.

So, you see, if the Prosecutor of the ICC tomorrow wants to open an investigation into the situation in Colombia – or any other country currently under preliminary investigation for that matter – he will have to ask for the approval of the Pre-Trial Chamber. But unless and until the Prosecutor does so, the Judges of the ICC have no involvement in the matter whatsoever, and I am no exception.

For this reason, I have been stressing throughout my visit to Bogota that I have no mandate to assess the progress of national judicial proceedings in Colombia, and it would be improper of me to do so. At least in theory, the matter could come before me in my capacity as an ICC Appeals Judge, if the Appeals Chamber was called upon to determine whether a case concerning Colombia is admissible before the ICC or not, taking into account possible prosecutions in the Colombian judiciary.

Let me stress one more time that the preliminary examination of the situation in Colombia is purely in the hands of the ICC Prosecutor who is completely independent, and I have no involvement in that matter.

Excellencies, ladies and gentlemen,

The ICC is gaining momentum and becoming a major global institution, since 114 countries have now ratified the Rome Statute. Without a doubt, we will see more States joining the ICC soon. In fact, on Monday, I heard the excellent news that Grenada had adopted a decision on accession to the Rome Statute and will likely deposit it at the UN headquarters in the coming days.

I am also very pleased to report that the Government of Malaysia has adopted the formal decision to accede to the Rome Statute, and in the Philippines the President transmitted the instruments of ratification to the Senate, which will hopefully approve it soon. Also in the Maldives the legislature is actively considering accession to the Rome Statute.

Furthermore, officials from Tunisia and Egypt have announced their countries' intention to join the ICC, and I hope we will soon see these statements materialise into action.

Another strong indication of the international community's growing confidence in the ICC was the recent, unanimous decision of the United Nations Security Council to refer the Libya situation to the Court. Ten Rome Statute State Parties on the Council, including Colombia, voted in favour of this decision, but so did five countries that are not ICC States Parties – these being the United States, Russia, China, Lebanon and India!

In my view, all these developments show that the Rome Statute and the ICC represent a crucial element in a global community of shared values.

Increasingly, the world recognises that mass atrocities such as genocide and crimes against humanity cannot be tolerated and that such crimes are not internal matters of sovereign states – instead, they are issues of global concern that require a global response.

The ICC cannot end impunity on its own, far from that. I wish to stress that the ICC is not a substitute for national justice systems; it merely complements them. Therefore it is crucial that States strengthen their national justice systems in order to be able to prosecute Rome Statute crimes in their own courts whenever necessary.

For a national jurisdiction to be fully able to tackle mass atrocity crimes, you need an adequate legal framework, professional investigators, judges and prosecutors, various material resources, and, finally, willingness to prosecute these crimes in which powerful persons and even state officials may be implicated.

The assistance and support of international and regional organisations and of various civil society groups is often of great significance for the important process of national capacity building.

Another matter of immense importance for the effective functioning of the Rome Statute system is the full cooperation of States with the ICC.

This is a firm legal obligation under the Rome Statute. The ICC has no police force or other enforcement mechanisms of its own and the Court cannot operate without the effective cooperation of States. Cooperation means for example the execution, by the States, of arrest warrants, freeze of assets or other requests by the Court.

The Rome Statute also requires States Parties to have national procedures in place for all these forms of cooperation. Last year, Colombia pledged to adopt legislation for this purpose and I was glad to hear from President Santos yesterday that he expects the ICC Cooperation Bill to be submitted to the National Congress before the end of the year.

These principles of cooperation and complementarity were powerfully reconfirmed at the Review Conference of the Rome Statute held in Kampala, Uganda, last year. They contribute to the structure of our community of values that has been set up with the Rome Statute and its implementation.

In order to make real advances in the global struggle against impunity, we need to strengthen the work of the ICC and national jurisdictions in parallel. We can always do more. We can always do better. And we should not rest so long as there is one perpetrator who has not been held accountable for their crimes, or a victim whose suffering was not heard. Justice must prevail.

Excellencies, ladies and gentlemen,

Allow me to conclude my lecture on a personal note.

61 years ago, when war broke out in Korea, a number of States from different parts of the world came to the assistance of my home country under the flag of the United Nations. Among these was Colombia, the only country from the entire Latin America that sent ground troops to Korea, to the other side of the globe. 165 young Colombian lives were sacrificed to achieve peace in my home country – and it was that peace which laid the foundation for the prosperity and stability that South Korea today enjoys.

I want to take this opportunity to thank your great nation from the bottom of my heart. I assure you that to this date, every Korean remains grateful to Colombia for the sacrifice it made to help our nation.

In the last two days, I have heard much about the terrible human suffering that Colombia has seen in recent times. I have also heard about efforts to provide justice, as well the challenges that exist in that process.

I sincerely hope that the principles of international criminal justice enshrined in the Rome Statute, which Colombia ratified in 2002, will help your country achieve lasting peace so that future generations can grow up and live without fear of violence.

There is no doubt that justice is one of the key prerequisites for a lasting peace – comprehensive justice, respecting the fundamental rights of all parties, holding perpetrators criminally responsible and providing reparations to victims.

That is our joint goal which we continue to work towards.

Thank you for your attention.