

“Building a Future on Peace and Justice”
Nuremberg
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Address by Mr Luis Moreno-Ocampo,
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Excellencies, Ladies and Gentlemen

It is an honour to be here today and I wish to thank the foreign Ministers of Finland, Germany and Jordan for their invitation to address this Conference.

60 years ago with the Nuremberg Trials, for the first time, those who committed massive crimes were held accountable before the international community. For the first time, the victors of a conflict chose the law to define responsibilities. In the words of the Nuremberg Prosecutor Justice Robert H. Jackson:

“That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgement of law is one of the most significant tributes that power has ever paid to reason”

Nuremberg was a landmark. However the world was not ready to transform such a landmark into a lasting institution. The Cold war produced massive crimes in Europe, Latin America, and Asia; Africa was still under the rule of colonialism and apartheid.

In the end, the world would wait for almost half a century after Nuremberg, and would again witness two genocides – first in the Former Yugoslavia, and then in Rwanda - before the Security Council

decided to create the ICTY and the ICTR, thus connecting peace and international justice again.

The contribution of the *ad hoc* Tribunals is yet to be fully recognized and measured. They developed the law, prosecuted the worst perpetrators, Generals, members of Governments. They contributed to restore lasting peace in conflict-torn regions.

The *ad hoc* tribunals for Yugoslavia and Rwanda paved the way for the decision to establish a permanent criminal court.

Ladies and Gentlemen,

For centuries, conflicts were resolved through negotiations without legal constraints. In Rome in 1998, a new and entirely different approach was adopted. Lasting peace requires justice-- this was the decision taken in Rome by 120 States.

They committed to put an end to impunity for the most serious crimes of concern to the international community and to contribute to the prevention of such crimes.

They created an International Criminal Court, a permanent court, with jurisdiction over genocide, crimes against humanity and war crimes. International Justice was not a moment in time any longer, neither an *ad hoc* post conflict solution: it became an institution.

The Rome Statute created a comprehensive and global criminal justice system:

- Substantial law has been 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 crimes have been meticulously defined; based on the jurisprudence by the *ad hoc* tribunals the definition of sexual violence has been further elaborated ; special emphasis has been put on crimes against children ;
- Different legal and procedural traditions have been integrated into a new international model; victims have been given the right to participate in proceedings; their voices and interests formally included at different stages of the process; a trust fund has been created for reparations or compensation in their favour ;
 - The scope of ICC jurisdiction reaches beyond any national or regional boundary; where as its predecessors were each limited in scope to a particular territory, the ICC is a worldwide criminal justice system. Its jurisdiction extends over crimes committed on the territory or by the nationals of more than a 100 States Parties; it could extend to the entire world as the United Nations Security Council can refer any situations to the Court.
 - Even more important, and the object of strong debate in Rome was the decision of States to give the Prosecutor the ability to trigger the Jurisdiction of the Court. By establishing the *proprio motu* powers of the Prosecutor to open an investigation, the treaty creates a new autonomous actor on the international scene. Such a provision, which allows the Court to act without an additional trigger from States or the UN Security Council, ensures that the requirements of justice will prevail over any political decision. This is a key defining provision for the new legal framework.

Ladies and Gentlemen,

Again let me emphasize the Rome Treaty was not drafted overnight. It is a strong and consistent body of law; the drafters were well aware that rendering justice in the context of conflict or peace negotiations would present particular difficulties and they prepared our institution well to meet those challenges. Careful decisions were made: a high threshold of gravity for the jurisdiction of the Court was established; a system of complementarity was designed whereby the Court intervenes as a last resort, when States are unable or unwilling to act; and the UN Security Council was given a role in cases of threats to peace and security.

States demonstrated their understanding of and firm support to this new design by the tremendous speed of the ratification process; less than 4 years after its adoption in Rome, the Statute entered into force.

It is the new law.

The issue is no longer about whether we agree or disagree with the pursuit of justice in moral or practical terms,

It is the law.

Ladies and Gentlemen,

The next challenge was to make this body of law operational, to transform ideas and concepts into a working system. This has been my objective during those first four years, as the Prosecutor of the ICC.

How to select the gravest situations to investigate?

How to trigger the jurisdiction of the Court?

How to protect witnesses and investigate in ongoing conflict situations?

These were the main issues to address.

As you know, over these 4 years, we have opened investigations in 4 situations – the Democratic Republic of Congo, Northern Uganda, Darfur in Sudan, and Central African Republic – all countries still engulfed at various degrees in conflict. We also analyzed the situation in Venezuela and the activities of nationals of 25 States Parties involved in Iraq. We are currently monitoring other situations in three different continents.

In each case, we collected evidence. The Court protected the witnesses. Victims started participating in the proceedings

As of today, the Judges of the ICC have issued 8 arrest warrants.

Thomas Lubanga Dyilo, the leader of the most dangerous militia in Ituri, in the DRC, is in the custody of the Court, awaiting trial;

In Darfur, our evidence has unveiled an organised system of attacks against the civilian population coordinated by Ahmed Harun then Minister of State for the Interior;

In Northern Uganda, evidence showed that the top Commanders of the Lord's Resistance Army were personally responsible for conscripting and enslaving children, slaughtering their families, forcing the displacement of millions.

After four years, the Rome system is in motion.

And we are faced now with a new and even more complex challenge, that all of you are familiar with in a domestic context - The enforcement of the law.

How to ensure the enforcement of the Court's decisions?

How to ensure, in particular, the arrest and surrender of individuals sought by the Court?

How to ensure the enforcement of the Court's decisions in situations where the international community is simultaneously trying to achieve many objectives; for instance, establishing security, providing humanitarian assistance, promoting political dialogue between the parties to the conflict, and preparing for reconstruction and development.

As the Prosecutor of the ICC, I was given a clear judicial mandate. My duty is to apply the law without political considerations. I will present evidence to the Judges and they will decide on the merits of such evidence.

And yet, for each situation in which the ICC is exercising jurisdiction, we can hear voices challenging judicial decisions, their timing, their timeliness, asking the Prosecution to use its discretionary powers to adjust to the situations on the ground, to indict or withdraw indictments according to short term political goals. We also hear officials of States Parties calling for amnesties, the granting of immunities and other ways to avoid prosecutions, supposedly in the name of peace; we can hear voices portraying the ICC as an impediment to progressing further with Peace processes.

These proposals are not consistent with the Rome Statute. They undermine the law States Parties committed to. It is essential on the contrary to ensure that any conflict resolution initiative be compatible with the Rome Statute, so that peace and justice work effectively together. Arrest warrants are decisions taken by the judges in accordance with the law, they must be implemented. I call upon States Parties and other stakeholders to remain in all circumstances

aware of the mandate given to the Court; there can be no political compromise on legality and accountability.

The challenges are immense for political leaders. In this new system, global standards have been established without a global police or enforcement apparatus; enforcement of the Court's decisions is the responsibility of national states.

Dealing with the new legal reality is not easy. It needs political commitment; it needs hard and costly operational decisions: arresting criminals in the context of ongoing conflicts is a difficult endeavour. Individuals sought by the Court often enjoy the protection of armies or militias, some of them are members of governments eager to shield them from justice.

Those difficulties are real. They can however not lead us to change the content of the law and our commitment to implement it. In all situations, more State cooperation in terms of securing arrests is needed. For the ultimate efficiency and credibility of the Court you created, arrests are required. The Court can contribute to galvanize international efforts, and support coalitions of those willing to proceed with such arrests. But ultimately, the decision to uphold the law will be the decision of States Parties. If States Parties do not actively support the Court, in this area as in others, then they are actively undermining it.

Ladies and gentlemen,

International justice, national justice, the search for the truth, and peace negotiations can and must work together; they are not alternative ways to achieve a goal; they can be integrated into one

comprehensive solution. The Court, as I emphasized earlier, was created to investigate and prosecute the worst perpetrators, responsible for the worst crimes, those bearing the greatest responsibility, the organizers, the planners, the commanders; national proceedings and other accountability mechanisms remain essential for the purpose of achieving comprehensive solutions ; they are not alternative but complementary processes ; in Uganda, the Court has issued arrest warrants against 4 individuals; but other national mechanisms can be useful for the other combatants, those who want to give up arms and rejoin their families, those who do not bear the greatest responsibility.

The tension I see in Uganda or Darfur is not between Peace and Justice. It is not the decisions of the International Criminal Court which undermine peace processes and conflict resolution initiatives.

On the contrary, the beneficial impact of the ICC, the value of the law to prevent recurring violence is clear : deterrence has started to show its effect as in the case of Cote d'Ivoire, where the prospect of prosecution of those using hate speech is deemed to have kept the main actors under some level of control ; in Colombia, legislation and proceedings against paramilitary were influenced by the Rome Statute's provisions ; we also have examples of military officials incorporating the constraints of the Rome Statute in their operational planning ; arrest warrants have brought parties to the negotiating table; have contributed to focus national debates on accountability and to reducing crimes ; exposing the criminals and their horrendous crimes has contributed to weaken the support they were enjoying, to de-legitimizing them and their practices such as conscription of children ; on the longer term, the Court will contribute to harmony or at least peaceful co-existence between former enemies as a sense of justice and reparation is achieved.

It is the lack of enforcement of the Court's decisions which is the real threat to enduring Peace. Allowed to remain at large, the criminals exposed are continuing to threaten the victims, those who took tremendous risks to tell their stories; allowed to remain at large, the criminals ask for immunity under one form or another as a condition to stopping the violence. They threaten to attack more victims. I call this extortion, I call it blackmail. We cannot yield.

Ladies and Gentlemen,

The decisions taken in Rome must be respected.

Because it is the law

Because this law was built upon the lessons of decades of massive violence and atrocities, when the international community failed, failed to protect Jews, Russians, members of different communities in Europe and the Balkans, Tutsis, Arabs.

Because experience has taught us that such a law is the only efficient way to prevent recurrent violence and atrocities.

Because in the real world, it is respect for the law that will protect our citizens.

Because in the real world of 2007, no State has sufficient power to guarantee the life and freedom of its citizens, if the international community is not upholding the rule of law.

We must learn at last: there is no safe haven for life and freedom if we fail to protect the rights of any citizen in any country of the world. To protect each of them we have to protect all of them.

Thank you.