



**Mr. Luis Moreno-Ocampo
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Address to the Assembly of States Parties

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Speech

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Mr President,

I have the honour to report to the Assembly of States Parties on the work of my Office and on our plans for the coming years. The report will cover the different dimensions of the Office of the Prosecutor's independent judicial mandate. I will highlight aspects related to the Prosecution's participation in Pre-Trial, Trial and Appeals proceedings. I will also present the Prosecution's activities outside of the court room: investigations, preliminary examination to analyze situations that potentially could fall under the jurisdiction of the Court and galvanizing efforts to arrest.

President Song described the different dimensions of the complex system of justice created by the Rome Statute. As he explained, the Court itself is just one part of the system. Other parts, such as States, international organizations and civil society are needed to make the system effective.

As in any Court, the Judges will make the final decision on the criminal responsibility of the accused.

As in no other Court, the Judges' decision will impact upon the citizens and the institutions of 110 States and beyond.

This is where States, international organizations and civil society will make the difference, making each specific case of this Court globally relevant. These two different dimensions of the Rome system should be emphasized: the judicial work of the Court is one dimension; the global impact of the Court's decisions is another dimension, your dimension. Both are key to our success in ending impunity and preventing crimes. The Office of the Prosecutor will continue working on both dimensions.

Proceedings

As President Song explained, trial and pre-trial activities have made significant progress in the course of this year. The Court will be making decisions on seminal legal issues raised by the Prosecution's cases.

In the first case of the International Criminal Court, the Office of the Prosecutor focused on crimes against children. The Prosecution alleged that Thomas Lubanga turned 9, 11, 13 year-old boys into killers and rapists and girls into cooks, killers and sex slaves. Lubanga did so in order to make them soldiers he could command and use at will to perpetrate atrocities against the Congolese people. The Judges will decide on the guilt or innocence of Thomas

Lubanga Dyilo. But already, this case has had an impact on countries like Colombia or Sri Lanka where armed groups use child soldiers.

Gender crimes are central to each of our cases in a way that clarifies how sexual abuses are a specific instrument in each conflict. As a war crime in the Bemba and Katanga/Ngudjolo cases, as a crime against humanity in the Joseph Kony case and as part of genocide in the case of President Bashir. The genocide charges are a matter currently pending decision by the Appeals Chamber.

Attacks against aid workers and peacekeeping forces are another troubling aspect of today's conflicts. The Judges decisions in the Haskanita case will address the seriousness of crimes committed against personnel and forces with protected status under international law; it will further refine key concepts such as "active participation in hostilities".

The case against Jean-Pierre Bemba will be the first case before our Court based on "command responsibility" as the mode of liability. This is the first time in an international court that command responsibility could be established for crimes of sexual violence committed by subordinates. This is another example of the global impact of the Rome Statute. Already before any Court decision, armies all over the world, even those of non-States Parties, are adjusting their standards and rules of engagement to the Rome Statute. This is the way to prevent crimes. The law makes the difference between a soldier and a terrorist.

Let me move to our activities outside of the courtroom: investigations, preliminary examination and galvanizing efforts to implement arrest warrants issued by the Court.

Investigations

The Office has to prove beyond any reasonable doubt the individual responsibility of leaders for massive crimes committed by members of their groups, militias or armed forces. We have to transform massive atrocities into clear and focused cases that can be tried within a few months. We have the duty to protect our witnesses as well as other persons at risk, such as intermediaries, who normally live in areas of armed conflict and can easily be threatened or killed by those supporting the accused. In order to respect the mandate of humanitarian organizations, my Office has made it a policy not to seek information from them or their personnel, but since they provide protection and care to the victims, the perpetrators are continuing to target them.

Mr President,

We could not have overcome the challenges we have faced in the past years without the logistical support received from the Registry staff in the field offices, the witness protection programs and the cooperation from States, international organizations and civil society.

Cooperation has been outstanding for our investigation in the Kivus region, where it is almost impossible to provide adequate local protection to witnesses. But we are making progress in our investigations of massive rapes, killings and looting.

Protection remains a major challenge. In this field, I would urge States to work with us on flexible solutions. Most witnesses do not want to be relocated permanently with their families to another country. They need intermediate solutions. Cooling-off periods, where they could be invited to trainings or seminars; they need short-term visas to be able to meet with our investigators in a secure environment. I urge you to consider favourably such requests for emergency visas. This has already been highlighted as a priority in this Assembly's report of 2007.

We have completed the disclosure of the incriminatory and exculpatory evidence in our possession in the Katanga/Ngudjolo and Bemba cases. Because we developed new practices there is no document received under the condition of confidentiality pursuant to article 54(3)(e) to be further disclosed.

One of our most challenging investigations is the investigation in Darfur. As of today, we are still monitoring the crimes currently committed against 2.5 million displaced in Darfur. We have presented evidence showing how President Bashir's forces were hindering the provision of international humanitarian assistance to internally displaced people in the camps. We alleged that President Bashir was creating the conditions of life calculated to bring about the physical destruction of specific ethnic groups displaced into camps. Hunger and rapes are the silent weapons used by President Bashir. Some actors tend to deny these crimes but the Pre-Trial Chamber considered them "extermination" and the Prosecution submitted that such acts constitute a form of genocide under article 6(c) of the Statute. President Bashir's decision to expel the humanitarian groups confirms our allegations. The Appeals Chamber will rule on the Prosecution's appeal relating to the genocide charges.

Preliminary examinations

In contrast to the *ad hoc* tribunals where the UN Security Council defined the situations to investigate, the Rome Statute opens the possibility for the Prosecutor to independently select situations and for the Court to decide. Pursuant to Article 15 of the Statute, my Office has the mandate to conduct preliminary examinations in order to determine whether crimes within the jurisdiction of the Court are committed.

The criteria are established in the Statute. First, the Office assesses whether the Court has jurisdiction over a given situation; second, whether crimes falling under the ICC's jurisdiction have been committed and their level of gravity; third, whether genuine investigations and prosecutions have been or are being carried out by the competent national authorities in relation to these crimes; and fourth, whether the possible opening of an investigation by the Office would not go against the interest of justice. Preliminary examination is a key aspect of the complementarity regime; it is a phase during which national proceedings can be encouraged.

In accordance with these statutory criteria, my Office is currently conducting preliminary examinations in relation to seven situations in four different continents: Colombia, Georgia, Afghanistan, Kenya, Cote d'Ivoire, Guinea and Palestine.

My Office is seeking to improve the transparency of its work during the preliminary examination phase in order to increase the predictability of the Court's action, to facilitate the cooperation of the different stakeholders and in order to prevent or stop the crimes.

Last week, I met with the President and the Prime Minister of Kenya. I informed them that since all of the criteria established in the Statute are fulfilled, it is my duty to open an investigation on the alleged crimes committed during the massive violence that followed the 2007 elections in Kenya. They stressed the need to prevent the recurrence of violence during the next election cycle and they publicly expressed their full commitment to cooperate with the Court's activities. In the coming days, I will request authorization from the Pre-Trial Chamber to open an investigation into the situation in Kenya.

Galvanizing efforts to arrest

The Prosecutor has to galvanize efforts to arrest individuals sought by the Court. The Office assesses for each case the best way to ensure the appearance

of the individuals charged before the Court. For Jean-Pierre Bemba, we assessed that a sealed warrant would be the most effective solution. In the case of President Bashir an open request was the option selected.

We studied the precedents of President Milosevic and President Taylor. The ICTY issued a public indictment against President Milosevic, and after a process of marginalization, President Milosevic was surrendered by his own State. The attempt to arrest President Taylor with a sealed indictment during his official visit to Ghana was unsuccessful. He was arrested almost three years later. I met with President Kufuor of Ghana, with former Chief Prosecutor Crane and with many others to discuss these issues. Arresting a serving head of State is neither a police operation nor a military intervention; it requires a process of marginalization both at the national and international levels.

Following the Prosecution's request of 4 March 2009, Pre-Trial Chamber I issued an arrest warrant against President Bashir for 5 counts of crimes against humanity including the crimes of extermination, rape and killing, and 2 counts of war crimes, intentionally directing attacks against a civilian population and pillaging. To date, the Republic of the Sudan has refused to implement the decision.

States have been steadfast in their respect for legal obligations to implement the arrest warrant against President Bashir. In a common statement, two of the Court's major supporters, Bruno Stagno Ugarte and Maxime Verhagen stated: *"To be successful Governments must do their utmost to ensure that those who are indicted do indeed face trial."*

African States Parties to the Rome Statute have been requesting that the UN Security Council consider a deferral of the Darfur investigation, but they remain firm in their legal obligations to execute arrest warrants should indictees be present on their territory. In the general debate of the UN General Assembly, on 29 October, Kenya on behalf of the African States Parties to the Statute reaffirmed their commitment to their legal obligations.

President Al Bashir, at risk of arrest, has not travelled to the territories of States Parties, such as South Africa, Uganda, Nigeria or Venezuela. His planned trip in November to a non-State Party, Turkey, was also cancelled.

The Prosecution, in fulfilling its duty to galvanize efforts to arrest, has consistently encouraged States not to offer any form of political support, or financial aid to any of those individuals subject of an arrest warrant or to those protecting them. It has also invited all UN Member States to sever all

non-essential contacts with the individuals sought by the Court. Non-State Parties have adopted such policies. President Luiz Inácio Lula da Silva from Brazil and President Cristina Fernandez de Kirchner from Argentina made public demonstrations of this policy. The process of marginalization is in progress.

In the Abu Garda case, as in the Harun and Kushayb cases, the Prosecution suggested that a summons to appear could be the most efficient way to ensure the appearance of the suspect before the Chamber. Five rebel groups which are parties to the conflict in Sudan publicly affirmed their intention to cooperate with the ICC even if individuals in their ranks were sought by the Court. Whereas Harun and Kushayb declined the opportunity and later became subjects of arrest warrants, Abu Garda appeared voluntarily before the Court on 18 May 2009 in compliance with a summons. He pledged full cooperation with the Court. The Prosecution is grateful for the cooperation received from many African and European States including Chad, Nigeria, Mali, Senegal, the Gambia and the Netherlands during this process.

Arrest remains the biggest test for States Parties. Some individuals sought by the Court are enjoying the protection of their own militias, such as the LRA leaders or Bosco Ntaganda. Others, like President Bashir or Ahmed Harun are members of governments eager to shield them from justice. They are still committing massive crimes.

Let me now to turn managerial aspects.

Managerial aspects

In terms of management, cost efficiency remains a priority. The Office has completed the recruitment phase and stabilised our vacancy rate at 4 %. As you know, the Office has presented a budget that does not envisage the establishment of any new posts. Our aim is to conduct additional activities with the same resources, but with an increased efficiency. We accept fully the recommendations of the CBF in regard to the budget.

There are two key aspects of our cost efficiency: flexibility and standardization. Our OTP teams and our OTP field offices will continue to be organized in a flexible manner; we will move our staff members according to the needs of the Office; a rigid organizational structure will be more expensive.

Standardization also enhances the Prosecution's performance. The Office is currently focused on consolidating its policies and practices to ensure clarity

of operational processes, reporting lines and responsibilities, and to facilitate in-house training leading to improved system of evaluation and internal compliance. The Office's Regulations, issued on 23 April 2009, are the foundation of this process. As a next step, the Office is in the process of producing an Operational Manual, which consolidates the best practices and lessons learned in a variety of areas. We are aiming to ensure professional excellence.

As I mentioned earlier, part of this efficiency depends upon cooperation with the staff of the Registry. We are still in the process of securing a common understanding on the services to be provided by the Registry to the OTP. We are also working with the Presidency to better harmonize the work of different Organs of the Court and to produce a clear report on governance. We are committed to the "One Court" principle and are mindful of our responsibility to build an institution.

Planning

This year my Office, as in 2003 and 2006, presented publicly its Prosecutorial Strategy. The strategy outlines our plans for the coming three years, aiming to ensure predictability of our work and to facilitate the planning by the others.

We defined five goals. The first three goals focus on the number and modalities of trials, investigations and preliminary examination to be carried out during the period of 2009-2012. The last two goals explain the steps that can be taken by States, international organizations and civil society to improve their participation in the Rome Statute system, in particular, to ensure the implementation of the arrests warrants issued by the Court and to maximize the preventative impact of the Rome Statute system.

The Prosecutorial Strategy for 2009-2012 remains based on the three principles defined in 2006: (i) positive complementarity, meaning encouraging genuine national proceedings where possible, in particular, during the preliminary examination phase; (ii) focused investigations and prosecutions, concentrating on those most responsible for the most serious crimes under its jurisdiction and presenting selected incidents; and (iii) maximizing the impact of its work for the prevention of future crimes.

We conducted a process of consultations with States, international organizations, NGOs and academics in meetings held in New York, The Hague and Geneva. We will further consult with States which have expressed interest, such as the African group. My Office will listen to their views. African countries are endeavouring to manage the remaining conflicts in the

Continent, the Court is making a contribution to their efforts, and they shall have the opportunity to present their particular concerns. The final version of the Strategy, taking into consideration the comments received during the consultations, will be adopted at the end of the year

The Office is also updating and completing policy papers on key issues such as: a) the selection of situations and cases; b) positive complementarity; c) the interests of justice; d) victims' participation; e) witness protection; f) disclosure of evidence; and g) gender crimes. The Office is aiming to ensure a consistent approach in all its cases, thus enhancing efficiency.

Mr. President,

I have completed two-thirds of my mandate and I am planning the activities for my last three years. I would like to highlight some views for your possible consideration at the Review Conference.

President Song presented the views of the Court. We will take no position on the substantive legal proposals that are on the agenda in Kampala but we will take part of the stock taking exercise.

I hope that we can focus on the real issues for realizing the full potential of the Rome Statute system: what strategies to implement the Court's arrest warrants? What strategies to address the real obstacles to domestic investigations and prosecutions of serious crimes?

The focus should not be on the judicial dimensions of the Court, the discussion should not affect the independent judicial mandates of the Prosecutor or the Judges. For instance, the discussion on what we call positive complementarity can be useful if we have full clarity on the objective and the limits: complementarity, when raised as an issue of admissibility of situations and cases before the Court, is a judicial matter on which the Court will make the final decisions. Positive complementarity is not about finding exit strategies for criminals who are the subject of an arrest warrant. Positive complementarity is about the role that different stakeholders can play to ensure the achievements of the goals defined by the Rome Statute.

The Prosecution is ready to cooperate with other actors in their efforts toward that end. For instance, in the Kivus region, we are working to produce dossiers, including information concerning perpetrators whom we are not prosecuting and to pass them to competent national authorities. But let me be very clear. Contrary to a lot of ideas circulating, what is lacking in the DRC and elsewhere is not technical competence. The issues are of a more sensitive

nature. We need to ensure the security of witnesses, judges and prosecutors. We need to strengthen the commitment of political and military leaders to stop the crimes.

Mr President,

Let me conclude.

The upcoming Review Conference in Kampala is also, and primarily, an opportunity, the opportunity to reaffirm the States Parties' commitment to protect the victims and do justice. The Review Conference must be first and foremost a global event, a global commitment to the end of impunity for the most serious crimes.

In Rome, the States of 1998 supported the idea of the end of impunity. Now, it is the time to show leadership, to fulfil promises. In Kampala, the States of 2009 can show the leadership to implement the idea. I hope that we will be able to welcome in Kampala new States Parties and to celebrate them.

The Review Conference should offer a space for national leaders, Presidents and Prime Ministers and international personalities to reaffirm their commitment to the Rome Statute; to Secretary General Ban Ki Moon to describe his work ensuring that peace and justice work hand in hand; to the AU High Level Mediators on Kenya, former Secretary General Kofi Annan, Mrs. Graça Machel, former President Mkapapa of Tanzania, and on Darfur, former Presidents Mbeki of South Africa, Pierre Buyoya of Burundi and Gen. Abubakar of Nigeria. Both high level panels have found ways to address the issues of peace and justice together and to work with the Court in a complementary way. The League of Arab States as well as its members, such as Qatar, can bring all their experience of working for peace and accountability in Darfur and in Palestine. Representatives of non-States Parties that are engaged with the Court, such as China, Russia and USA should share with us their views.

Mr. President,

The Review Conference should be an opportunity to show a community of nations and citizens committed to end impunity for massive atrocities; a community of nations and citizens working to protect those with no rights, those 11 year boys forced to kill in Bunia or Gulu; or those 13 year old girls raped in Bangui or Darfur.

Mr President,

Thank you for this opportunity to address the Assembly of States Parties of the Rome Statute, thank you for the privilege to work as your Prosecutor.