



**Mr. Luis Moreno-Ocampo
Prosecutor of the International Criminal Court**

Address to the Assembly of States Parties

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Speech

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Check against Delivery

Mr. President of the Assembly, Mr. Secretary-General,
Mr. President of Colombia,
Excellencies,
Distinguished delegates, Ladies and Gentlemen,

I have the honour to report to the Assembly of States Parties on the work of the Office of the Prosecutor.

Let me start by congratulating the President of the Assembly of States Parties for his efforts and leadership, in particular, during the Kampala Review Conference.

As President Song said, Kampala was an historic event; States reaffirmed their commitment of 1998 and reiterated their “determination to put an end to impunity and thus to contribute to the prevention of such crimes that threaten the peace, security and well-being of the world”.

I would also like to thank the Secretary-General for his presence here today and in Kampala. There, he highlighted that in 1998 few could have believed that the Court would spring so vigorously into life promoting the birth of a new Age of Accountability.

Few countries in the world have had to face the level of violence that Colombia suffered during the previous decades and few leaders in the world have to deal with such powerful criminal organization than the President of Colombia. He had to make critical policy decisions. And the President of Colombia is the first Head of State to participate in a meeting of the Assembly of States Parties. He shared with us his policies on crime control, justice and victims’ reparations. He requested support and he offered assistance. We are ready to work with him. President Santos, thank you for your leadership.

Mr. President,

Let me brief the Assembly on our new investigations. During 2010, we concluded the first phase of the investigations on the crimes committed by the FDLR, the last inception of a group that was involved in the genocide in Rwanda, provoked the first Congo war, was involved in the Second Congo

war, and produced during 2009 and 2010 a massive campaign of rapes and gender crimes in the area of the Kivus.

For some years, FDLR leaders were able to use Europe as a safe haven. However, the Rome Statute provided a framework for a collective effort to arrest them. The Office requested cooperation from German authorities, who decided to move ahead with its own national investigation. In accordance with its policy of positive complementarity, the Office provided full cooperation with such national efforts. France, following our request of cooperation, conducted extensive investigations against Callixte Mbarushimana, the Executive Secretary of the FDLR living in Paris. DRC authorities provided information and support for investigative efforts on the ground. The Government of Rwanda, a non State Party, facilitated our investigations on its territory and cooperated with all these justice efforts. I would also like to recognize the leadership of Secretary-General Ban Ki-Moon and his Special Representative on sexual violence in conflict Margot Wallström in denouncing and mobilizing efforts to put an end to FDLR atrocities.

As a result of such collective efforts, the FDLR President and Vice President were arrested in Germany and waiting for trial before a national court, and Callixte Mbarushimana is arrested in Paris, and his surrender to the ICC is pending an appeal before the Court of Cassation. The FDLR organization is beheaded.

The Court will eventually define the individual responsibility of Mr. Mbarushimana, but to prevent future crimes in the Kivus, there is a need to capitalize on the momentum and demobilize the FDLR. The Office of the Prosecutor is preparing new cases and liaising with concerned partners in order to maximize the preventative impact of the Court.

Mr. President,

Next week, the Office of the Prosecutor will present to the judges two different cases in the Kenya situation, each involving three individuals that according with the evidence collected are the most responsible for the crimes committed.

I am particularly grateful for the respect and support Kenyan leaders have demonstrated for our independent role. Since our first meeting, I have been impressed by the commitment of President Kibaki and Prime Minister Odinga to find solutions to past conflicts.

Let me emphasize one thing that is making a difference in Kenya. The international community is united, and part of the solution. The African Union Panel of eminent African personalities, under Kofi Annan's leadership, helped Kenyans to stop the violence, to reach an agreement to share power and to do justice. Indeed, Kofi Annan has remained involved to ensure the full implementation of such agreement.

Different States Parties of the Rome Statute are joining efforts. Ghana, Uganda and Tanzania are immediate examples. Other examples are Colombia offering its experience on victims' reparations, the United Kingdom making a special contribution to protect witnesses, Germany providing treatment for HIV/Aids victims, and the Netherlands supporting human rights defenders. Non States Parties, such as the United States, are fully supporting the need for accountability and the Court's intervention.

The coming months will be crucial for Kenya. The investigations could support the process of structural reforms and can help to prevent violence during the next Kenyan elections in 2012. Additionally, the cases could have an impact on the entire region. Guinea and Côte d'Ivoire are good examples of the risks. We are receiving requests from the country, encouraging our intervention. This Assembly should discuss how to react to the situation in Côte d'Ivoire.

Mr. President,

Let me brief you on preliminary examinations. The Office of the Prosecutor has the unique mandate to assess whether allegations of crimes within a situation meet the legal criteria established by the Statute and thereby warrants investigation by the ICC. The Office considers that the strict application of the Statute adopted at Rome is its legal obligation and it should not and will not take into account political considerations such as geographical balance.

The Office has presented a draft policy paper reflecting its approach and its practice and it is ready to receive comments during a side event on Wednesday.

I would like to summarize our activities. Currently, there are 9 situations under preliminary examination:

The Office is assessing if the document lodged by the Palestinian National Authority meets statutory requirements. Before making a decision on its preliminary examination, the Office will seek to ensure that all parties concerned have had the opportunity to provide the information that they consider appropriate.

In Afghanistan, Côte d'Ivoire, Honduras and Nigeria, the Office is examining whether crimes under the jurisdiction of the Court exist.

Last week, the Office received communications alleging that North Korean forces committed war crimes in the territory of the Republic of Korea. The Court has jurisdiction on the territory of the Republic of Korea since 1 February 2003 and therefore we opened a preliminary examination to evaluate if the incidents denounced constitute war crimes under the jurisdiction of the Court.

In Georgia, Colombia and Guinea, the Office is following the national proceedings.

The preliminary examination process provides an additional opportunity to mobilize the efforts of States, international organizations and civil society to support the national jurisdictions in their fight against impunity. To facilitate this collective action, the Office will increase the information about the situations under preliminary examination and provide periodic reports. We also plan to organize meetings in The Hague and possibly in New York to brief you periodically on these activities.

Mr. President,

One of the most critical factors to increase the efficiency of the Rome Statute and its preventative impact will be to arrest the individuals sought by the Court.

The most urgent and difficult case is the implementation of the arrest warrants issued in the Darfur situation, in particular the ones for genocide, crimes against humanity and war crimes against President Al Bashir. In three days, I will brief the UN Security Council and I will clarify that the judges considered that the ongoing rapes and the fear in those millions displaced in the camps constituted genocide under Article 6 (b). I will describe that the crimes continue, that instead of stopping the crimes, members of the Government of the Sudan are stopping the information about the crimes. The Government of the Sudan, as the sovereign territorial State, has the primary responsibility and is fully able to implement the warrants issued by the Court. It has not done so. The matter is in the hands of the UN Security Council.

In the case of Joseph Kony and other leaders of the LRA, there are ongoing military operations to arrest them executed by the Uganda army, supported by the Central African Republic, the Democratic Republic of the Congo and the United States governments. I would like to highlight the role of different NGOs to promote and get the approval of the US Congress to request a strategy to arrest Joseph Kony.

The alleged crimes committed by Bosco Ntaganda in the Kivus are the price that the world pays for impunity. His arrest is long due, and we trust that it will be implemented as soon as possible.

Mr. President,

I am approaching my last 18 months as the Prosecutor, therefore the plans for the next year are crucial for me. I am confident that at the end of 2011 there will be final decisions in the trial against Thomas Lubanga, and also in the trial against Mathieu Ngudjolo and Germain Katanga. The Bemba trial will be in its final phases and I hope we will be able to conduct a very short and efficient trial in the case against Mr. Jerbo and Mr. Banda. We also foresee that during 2011, the Court will be working on the confirmation hearings of Callixte Mbarushimana and the two new Kenyan cases.

We are also planning to present new cases about crimes in the Kivus and we will evaluate the need to present new cases in the Darfur situation.

One of my priorities for the next year is to contribute to consolidate the institution building, in particular in three different dimensions: within the Office of the Prosecutor, in relation with the other organs of the Court and in the relation between the Assembly with the Court and its organs.

Let me start with the last point. In 2011, the Assembly will discuss a constitutional issue that will define the future of the Rome Statute: the definition of the proper scope of the oversight role of the Assembly of States Parties, as envisioned in Article 112 of the Statute. I share the views of the President: judicial independence could not be an excuse for lack of efficiency or lack of accountability.

Following my legal mandate to be independent and to maintain the integrity of the Office, my duty is to inform you about the risk on the policies to be adopted and my Office's views on the legal aspects. Then is a matter for the States Parties to take into consideration.

The Office welcomes the initiative of the Hague Working Group to establish a Study Group to conduct a structured dialogue between States Parties and the Court. The Office is ready to present the full picture of its activities in order to allow the States Parties to analyze what happens in the building in The Hague and activities and impacts around the world. As any criminal court, the ICC will decide on the criminal responsibility of individuals, but as no other Court in the world, its decisions will impact in 114 States and beyond. The contribution to the prevention of crimes considered in the Statute and highlighted in Kampala, is the most important aspect of the Court's cost efficiency. It should not be ignored.

The Office will suggest to this Assembly to refine the goal of the Study Group. The Court sent a letter to the Hague Working Group expressing its concerns about reopening a discussion on the internal corporate governance adopted by the Court. It is important that these concerns be fully taken into consideration.

States should decide what constitutes a proper dialogue with the Court. During my presentation to this Assembly on 2008, I requested as a priority and I quote: "the implementation of the independent oversight mechanism which will address misconduct, including internal sexual harassment." End of the quote.

I welcome the possibility to have a tool to investigate misconduct of the Office's staff. However, the IOM mandate proposed includes the possibility to replace the authority of the Prosecutor to start investigations and provides it for the IOM, a subsidiary body of the ASP. This proposal creates the risk of undue interference with the judicial activities of the Office. As explained in our legal memoranda, the Statute establishes that the Prosecutor is accountable before the Assembly, and to protect their independent work, the Office staff is under the full authority of the Prosecutor. Therefore, the proposed mandate for the IOM extends beyond the oversight role envisaged by Article 112 (4) and infringes with the independence of the Office of the Prosecutor guaranteed by the Rome Statute.

The Office considered that the IOM's proposed mandate has no clear legal and policy basis. The arguments presented during the discussions were contradictory and included references to the UN or *ad hoc* tribunals, but had no basis in the Statute. As a matter of policy, the Office never received an explanation as to why the Prosecutor could be trusted to investigate Heads of State, but not to investigate the staff of the Office.

The Office considers that an ASP resolution based on an erroneous interpretation of articles 42 and 112 could set a dangerous precedent for future decisions on oversight that may further affect the integrity of the Statute, and would place the entire Rome Statute system at risk.

The Office is willing to provide any additional clarification necessary to facilitate the debate on this matter, including comments provided by some external commentators such as Professor José Alvarez or Judge Richard Goldstone.

In terms of institution building, and as mentioned by the President of the Court, the adoption of a Corporate Governance Statement on the roles and responsibilities of the organs, after a process of consultation with all the judges and the organs, is a major achievement of the Court. We are now refining our mutual understanding of the services to be provided by the Registry, increasing efficiency.

Within the Office of the Prosecutor, the priority is to finalize the process of standardization. We are completing the drafting of the main policies and the Operational Manual. This will ensure a consistent activity throughout the different teams, enhancing our capacity to rotate resources to improve our efficiency.

In 2011, the Assembly has to select a new Prosecutor. In order to ensure a smooth transition, I would propose that the person elected join the Office as a consultant at the beginning of 2012, in order to be familiar with all the details of our operations.

Mr. President,

Let me conclude,

This is an interesting time. This meeting of the Assembly is an opportunity to further develop the collective and individual commitments adopted in Rome and confirmed in Kampala. The Court's vigorous spring mentioned by the Secretary-General is forcing states to face new challenges. The Rome Statute established specific legal obligations, but in addition, now States have to make new policy decisions. It is the time to show leadership. As the UN Secretary-General Mr. Ban Ki-Moon said, we have to contribute to the creation of a global community based on respect for the law.

Thank you for your attention and your commitment. I wish you very fruitful deliberations.