

**SPEECH BY SERGE BRAMMERTZ,  
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I have been asked today to focus on a specific topic, namely our experiences with investigations in the field. Since the last briefing in Brussels, we have initiated and carried out two investigations based on referrals from States Parties, Uganda and the Democratic Republic of Congo. We have carried out numerous investigation missions to the field, interviewing persons and collecting other evidence. Excellent progress has been made in both investigations.

On Monday, we initiated our third investigation, into the situation in Darfur, following a referral from the Security Council.

We carried out our first investigative activities at the same time as hiring and assimilating new staff, developing new protocols, and establishing cooperation networks. At each step of the way, we are encountering issues that have never been considered before. We must proceed expeditiously, but at the same time think carefully in our decisions.. We have to build a new permanent institution, determine strategies and best practices and at the same time we must be operational on the field, fulfilling high expectations.

We have adopted strategies to address our challenges and obligations.

- Small, flexible Office, relying on cooperation networks with a range of partners.
- Focus on those who bear the greatest responsibility.
- Focused investigations and focused charges.
- Interdisciplinary approach.
- Respect for interests of victims.

Our investigation teams include investigators, case analysts, interpreters and field operators. The teams draw on extensive support from trial attorneys, analysts, cooperation experts, victims experts, forensic coordinators, legal advisers, translators, evidence assistants and others.

Daily interaction takes place with Registry especially in victim protection and field activities (travel, field office)

Our teams have training on investigative methods, security, first aid, crisis management, and cultural sensitivity.

I will try now to give you a sense of the work we are doing and our experiences with investigations in the field. You will appreciate that I have to limit myself in many respects given the confidential character of investigations.

### **Scale of Crimes**

One challenge we face in our investigations is the scale of the crimes. To use the DRC situation as an example; the situation involves thousands of deaths by mass murder and summary execution since 2002, as well as large-scale patterns of rape, torture, and use of child soldiers.

Numerous armed groups active in the DRC are allegedly involved in crimes. Groups are unstable, with non-conventional and changing structures. It is a volatile situation where alliances are continuously shifting.

To deal with this scope of crimes, we focused our investigation through analysis.

We identified the Ituri region as the area with the gravest crimes within our temporal jurisdiction. We then did analysis to identify and prioritize the groups most responsible for crimes. We plan to work sequentially in the DRC, starting with one or two cases, selected based on gravity, while continuing to develop other cases.

The concept of analyses driven investigation is implemented in all investigations. Only detailed analyses from headquarters allows detailed and focused planning on our investigation.

Analytical tools are used for the analyses of the high volume of documents collected and through all the investigative process.

### **Staff Security**

We often must work in situations of ongoing conflict. In the DRC, large parts of the territory remain outside effective governmental control. In Uganda, the LRA is active in many areas.

Security for staff is a major concern. We take all measures not to expose our staff to inappropriate risks.

In some areas, such as capitals, our staff can be lodged in hotels. In other areas, for example in Ituri, we make other arrangements, such as staying in peacekeeper camps.

During missions of our investigation teams, attacks on MONUC forces by rebel

groups have taken place.

While we must always show our independence, we are also obliged at times by the security situation to rely on national authorities and others to provide military escorts or armoured vehicles. It can be difficult at times to manage the balance between demonstrating and upholding the appearance of independence, and ensuring security. We manage the balance as best we can. Part of the solution is to rely at different times on different partners.

Another element of security for staff is reliable communication from remote areas. We have had to overcome logistical and regulatory hurdles in order to equip our people with reliable radios and satellite phones.

Health can also be an issue for our teams. Despite all precautionary measures that can be taken, team members have fallen ill and have been referred to the tropical disease clinic in Rotterdam to obtain treatment for illnesses such as malaria.

### **Witness Security**

Witness security poses a range of issues, especially given that we work in conflict situations while being based in The Hague. Security of witnesses and victims is a high priority for us. We have adopted multiple methods to address this.

First, we strive to limit the number of witnesses we contact, in order to limit the risk.

Second, we try to work with witnesses who are outside the area of conflict; whether in other countries or in more secure parts of the country.

Third, where we have identified a small number of victim witnesses in an area whom we need to interview, we apply a policy of conducting interviews only where there has been a clear assessment of protection issues. In some cases, this means we must first put in place suitable witness protection arrangements. For categories of vulnerable witnesses, we also require an assessment by the OTP witnesses unit to determine (1) whether we can interview in the circumstances and (2) what follow up is needed. These policies have at times caused some delays but security is a paramount concern.

Forth, we try to interview witnesses in ways and places so that others will not know that a person has been interviewed. This is a particular problem if you have to investigate in villages in conflict areas only accessible by MONOC helicopter and military escort. At times we have adopted innovative ways to transport witnesses in secret or to meet them without raising attention.

In some areas it is very difficult to find suitable secure sites to conduct interviews. We sometimes must do interviews in hotels or locations provided by international organizations. This situation is far from being ideal for many reasons (confidentiality, security).

Where witness protection is required, the Registry works with us to find partners, including local governments, to provide witness protection. We sometimes work with local police who may have limited experience in witness protection and limited resources. Sometimes circumstances have required us to improve local capacity to provide witness protection. In one example, local

police had no equipment for witnesses to communicate if they have problems, and no means of transport to come to the aid of witnesses. We therefore supplied them with communications equipment and with contingency arrangements for transport if needed.

### **Regulatory and Logistical Issues**

Dealing with even simple logistics in the field can often require creativity and flexibility, in ways that might not at first be obvious from Brussels or The Hague.

Some obstacles arise from lack of implementing legislation. In Uganda, a constitutional issue has created delays with all legislation. In the DRC, issues of transition and adoption of a constitution have caused delays.

For example, in Uganda, we were unable to register vehicles in the name of the ICC because the ICC lacked legal personality in Ugandan law. This was solved through discussions of the OTP and Registry with the Ugandan government. The Ugandan government found interim solutions so that we could register the vehicles.

Equipment and transport will generally be a challenge in field work. For example, in Uganda, before the registration issue was solved, we had to rent vehicles. Our teams experienced 10 vehicle breakdowns with rented vehicles. Now that we have our own vehicles, we expect this particular problem will be reduced.

Similarly, transport in the DRC is a challenge. It is 1700 kilometers from Kinshasa to Bunia. We must fly through neighboring countries, Kenya and Uganda, to enter Eastern DRC. To get to Ituri, we rely on MONUC flights, on a cost-reimbursable basis and with a low priority, so our missions are very dependent on MONUC decisions. The aging Anatov planes face many technical problems, and flights are often cancelled for various reasons. Nonetheless, this is simply a fact of our operations.

Our planning also has to take into account power shortages. For example, we are required to conduct questioning of potential suspects on video or audiotape, and therefore have often had to suspend interviews because of lack of power. We are trying to procure generators to overcome this problem.

### **Field Experience**

It is extremely complex to organize from The Hague some aspects of our work, such as locating and screening potential witnesses. Moreover, working from hotels poses problems of where to take statements and how to organize work in a secure way. . This is why we have concluded that a permanent premise is very important. Establishment of field presence will always be highly dependent on the security situation.

The Registry and the OTP have established a field office in Kampala. For the office in Kinshasa, the building is available and the work is done, and we are awaiting installation of equipment. We will also have an advance operational base in Bunia, in containers in a military base. Our people will be present on an ad hoc basis.

Field presence is not only important to facilitate investigations and witness security, it is also important for perception and outreach. If people know there is a concrete location for the ICC they can more readily contact us.

### **Language and Culture**

Language and culture require special sensitivity. We have insisted on special training for our investigators and staff going to the field to raise their awareness of local culture. Because witnesses are culturally diverse and potentially traumatized, we need specialized support on all investigative missions. For example, in Uganda, we require translators fluent in six different dialects.

Many of our witnesses are not familiar with criminal justice as it is known in other countries. They simply do not relate to explanations about law, lawyers, rights and procedures. This can make it difficult to explain and understand the legal caution that must be given prior to some interviews. Indeed, the local language may not even include words for some of the concepts in the caution.

The work also requires cultural understanding. For example, the notion of time is not the same in all cultures. A witness may not be able to situate an event in terms of the date or time. But the witness might describe the location of the sun during the event.

The notion of family can also be different. A person may refer to someone as their brother or uncle, but upon inquiry it turns out that the person is a distant

cousin. We have developed awareness of these issues in our questioning, so that we can ask the right questions.

Some potential witnesses may not be accustomed to travel and transportation. Going to Bunia may be a major ordeal and the longest trip of their life. So we would have to hesitate over whether to ask such persons to come all the way to the Hague. The courtroom itself would be an intimidating environment. We have the ability to interview someone in a location where they would feel comfortable, not in courtroom, but to do it remotely through video.

### **Cooperation**

We have received strong cooperation in both situations.

Cooperation in Uganda has been excellent, both from the government and from all other partners. Despite concerns of some partners about the involvement and impact of the ICC, cooperation has been steady.

In the DRC, the government is cooperating with our investigations. However, the government faces great challenges re-asserting control and establishing institutions. Some areas of the DRC do not yet benefit from the deployment of army and police, which are now being integrated and deployed. Logistical issues are a barrier for cooperation. For example, it is difficult to set up proper cooperation procedures when there are no working fax machines or no direct means to have requests for assistance implemented on the field.

In both situations, we have concluded important cooperation agreements to facilitate our work. We also have specific agreements on topics such as witness security and privileges and immunities.

In the DRC, the cooperation of MONUC is indispensable. Working with the Registry, we are negotiating a formal agreement with MONUC. We hope for progress as soon as possible. While we are obtaining good logistical cooperation on an ad hoc basis for each of our missions, sharing of information will remain difficult until the agreement is concluded.

### **Local Communities**

Working with local communities is an important part of our work in the field. It is important for us to explain our activities and to raise understanding and support, since local groups are in contact with the victim population and they are an important intermediary. In addition, there is also a more direct impact, since local groups can identify victims, provide information and reports, and advance our work. Opportunities for cooperation are strong, although of course we must mutually respect independence.

I will focus on Uganda for the purpose of providing an example. In our earliest outreach, we identified key local constituencies, and listened to their concerns. Their concerns informed our strategy and operations. This led to our decision to maintain a low profile for the first year of operations, to develop trust.

Many local and international actors in Uganda expressed concern about the potential impact of ICC involvement. The challenge is how to achieve justice

alongside peace and humanitarian efforts. We are striving to carry out our mandate, while taking concrete steps to manage our profile and activities so as to avoid any disruption to the peace process. This conforms to the approach in UN report on the rule of law, which advises that justice, peace and democracy are not mutually exclusive but rather mutually reinforcing imperatives.

At this time, we have consolidated relationships and have the support necessary to begin increasing our profile. In addition to our frequent consultations in Uganda, we invited over 30 community leaders to Hague in April and May of this year. We discussed key issues, including the peace process, security and public information. These leaders, although they had concerns and disagreements, agreed on a comprehensive approach. We agreed that justice could be pursued at the same time as peace, humanitarian and other efforts. We will carry out our mandate (justice) but we can be sensitive to these other efforts. We agreed on the need to coordinate efforts and to disseminate information. There has been a strong focus now in Uganda on the importance of providing justice. We will continue to engage with local communities to explain our role and to discuss concerns.

Engagement with local communities is an important feature in all investigations, and one which we continue to intensify. Two weeks ago, during my last trip to the DRC, I met with local NGOs to discuss roles and identify ways we can further strengthen cooperation.

## **How States Parties Can Help**

I have tried to provide a simple overview of some of our experiences with investigations in the field. I want to close by emphasizing that we need your steadfast support.

We need agreements for sharing of sensitive information. Such information is essential for our strategy of focused investigations.

We need logistical support for our activities. Forensic teams, software and equipment could be important contributions.

We need support to facilitate arrests in both situations. The challenge to make arrest warrants meaningful and effective will be a collective challenge for all States Parties.

We need institutional cooperation. We are strengthening our relations with war crime units, and we will be present at the Interpol war crime conference next week.

Above all, we need strong political support and commitment to justice. This also includes working with other states and organizations to encourage cooperation.

We need to maintain a dialogue, to explain our strategies and to receive your feedback. The Prosecutor has invited all States Parties to a meeting at the seat of the Court on Monday 20 June. In contrast to the short overviews we can provide at Diplomatic Briefings, this meeting will allow a more informal and technical exchange of information and ideas on the guiding strategies of the Office.

We are advancing our investigations in a timely manner. We ask that you help us to build understanding of our work, and that you continue to give us your unwavering support.

Thank you.

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