

Mr. Luis Moreno-Ocampo*

I would like to join the President of the Court, Philippe Kirsch, in thanking the Assembly of State Parties and Ambassador Wenaweser, for having organized this event, as well as the United Nations for hosting this 10 year Anniversary celebration.

In Rome in 1998, countries presented their commitment to justice as a contribution to the promotion of international peace and security. The South African Minister of Justice stressed that the establishment of the Court “would ultimately contribute to the attainment of international peace.” The Brazilian Representative explained that “The establishment of an International Criminal Court represents not only a milestone in the development of international criminal law but also a powerful instrument of preventive diplomacy,” adding “we should not miss this opportunity”.

The Rome treaty provided an independent and permanent justice component to the world efforts to achieve peace and security. As United Nations Secretary-General Ban Ki-moon stated in 2007, “The rule of law is a fundamental principle on which the United Nations was established. The United Nations goal continues to be a community of nations operating according to rules that promote human rights, human dignity and the settlement of international disputes through peaceful means. International criminal justice, a concept based on the premise that the achievement of justice provides a firmer foundation for lasting peace, has become a defining aspect of the work of the Organization”.

As the Secretary-General said, Nations have to operate in accordance with the law. The law is not just for the Courtroom. The law expresses what is right and what is wrong for a community, in this case for a global community. 10 years ago more than 100 States decided that ending impunity is the right answer to prevent the most serious crimes. And 3 years ago the United Nations Security Council affirmed that justice and accountability are critical to achieve lasting peace and security in Darfur.

Humanity is learning. After the Holocaust, the atrocities of the Khmer Rouge, and the Rwanda genocide, as the Secretary General said, we are contributing to the creation of a global community based on respect for the law.

Is it easy? No. There are tensions when we open investigations, when we request arrest warrants. There are tensions in the Courtroom and tensions on the field. Presidents and ministers have to show leadership and adjust to a new legal framework. It is not easy.

But it is necessary.

In Rome, the European Union Representative said “if we can agree to establish a truly effective, permanent Court we will have made the world a more just, safer and more peaceful place. More just, because perpetrators of atrocities will not go unpunished; safer, because it will deter those who might otherwise act with impunity; and more peaceful, because the knowledge that justice is being done may help the victims to put the past behind them and encourage all the parties to participate in a process of reconciliation... We stand on the brink of an historic achievement... Let us now seize the opportunity that history has given to us, and make the court a reality”.

In New York, today, we can state: The Court is now a reality. Let us seize this new opportunity.

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I have the privilege to be the Prosecutor of the International Criminal Court. I have the enormous responsibility to select the situations where the Court would intervene. This was seen in Rome as the most sensitive of issues. I independently selected the gravest situations under our jurisdiction, where there were no national proceedings. Selection of situations is, at the end of the day, straightforward. I have to apply the law. Nothing more. Nothing less. That is what we did and what we will continue to do.

We are investigating those most responsible for the most serious crimes. We have to do it during ongoing conflicts, when no national Court can investigate. We have to transform massive crimes with thousand of victims and perpetrators into clear cases. Protecting the witnesses and fully respecting the rights of the accused.

We are prosecuting Thomas Lubanga for recruiting child soldiers and transforming them into killers.

We are prosecuting Joseph Kony and other leaders of the Lord's Resistance Army for killing entire communities, raping and abducting children and transforming them into sexual slaves and killers.

We are prosecuting Germain Katanga and Matthew Ngudjolo for killing and raping civilians.

We are prosecuting Jean-Pierre Bemba, for a campaign of rapes and pillaging.

We are prosecuting Ahmed Harun and Ali Kushayb for massive killings, rapes and tortures of civilians in villages.

We have requested an arrest warrant against Omar Al Bashir for genocide, crimes against humanity and war crimes. We allege that he is committing genocide by attrition.

We are also showing how the complementarity system can work in practice in different countries, but in particular in Colombia.

The Court is building the foundations of an international criminal system for the entire world and for the next centuries.

- Victims are participating at all stages, with the right to send information to the Prosecutor to form the basis of the opening of an investigation, and the right to present their views and concerns during proceedings; last week, the Appeal Chamber decided that they could also in some particular cases present evidence. They will benefit from a comprehensive system of reparations.
- Witnesses and victims are protected in accordance with statutory requirements; it is a key part of the fair trial concept; and one of the most serious challenges we are faced with. Over the last four years, no International Criminal Court witnesses or staff have been wounded or killed. It must remain so.
- Procedures to respect the confidentiality required by providers of information to protect the security of their staff and procedures to disclose all the relevant information of exculpatory nature to the defence are being harmonized.

On this, we are extremely thankful to the United Nations and especially to the Legal Advisor Nicholas Michel for their efforts to find solutions to the particular situation of the Lubanga trial. Last Friday, my Office transmitted to the Trial Chamber a letter from the United Nations that offered to meet all the conditions requested by the judges to proceed with the trial. The decision now rests with the judges. I am hopeful that after a proper evaluation of the documents there will be justice for Lubanga's victims.

But whatever happens, the Lubanga case demonstrates the Court's attachment to fair trial. Fair trials are the cornerstone of our legitimacy. Nothing is more important for a Court of justice.

As the President of the Court explained, we are transforming the Rome Statute from a document into a living system.

The system created in Rome is in motion. In the courtroom and beyond. As I said the law expresses what is right and what is wrong for a community. The law is not just for the judges, the law clarifies what people should do. A ruling of the International Criminal Court will reverberate on at least 106 states and citizens all over the world. The Rome Statute applies also to political leaders working to seek solutions to international conflicts, military actors, diplomats, and negotiators. They have to adjust. As the Prosecutor my duty is to present evidence to the judges and they will decide on the merits of such evidence. I will apply the law without political considerations and I should not adjust to political considerations.

To facilitate other actors to adjust to the legal framework, I offer as much clarity and predictability as possible. I made public my prosecutorial strategy, including the focus on those most responsible and the number of cases and investigations that my Office foresaw. In the Darfur case I announced my next steps in my briefings to the Security Council. For instance, in December 2007 I informed the Council about the preparation and the focus of the second case which I just presented three days ago to the judges.

There are significant achievements in the implementation of the Rome Statute by different actors. Armies around the world, even from non signatory countries, are adjusting their regulations to what is right, avoiding the possibility of their personnel committing acts that would fall under the Court's jurisdiction. This is the way to stop crimes. The law makes the difference between a soldier or a terrorist, a policeman or a criminal.

The ability of States Parties to arrest individuals was also remarkable. Democratic Republic of the Congo and Belgium implemented immediately the mandate of arrest issued by the judges, showing the Rome System in operation.

We can do more to arrest the individuals that are enjoying military or political protection. The difficulties can not lead us to change the content of the law and our commitment to implement it.

The case of Joseph Kony is an example of what we cannot do. Kony uses the time and the resources of the Juba talks to promote his criminal goals. He is now inflicting violence on a new generation of victims and threatening the stability of Southern Sudan. How many times will Kony, charged with crimes against humanity and war crimes, use negotiations to regain power and attack again? We need a different strategy including cutting financial and arms supply networks and promoting defections from the Lord's Resistance Army.

We have to update and harmonize old conflict management strategies with the new framework created by the Rome Statute. International justice, national justice, the search for the truth, peace negotiations can and must work together; they are not exclusive of each other; they must be integrated.

Conflict managers have to respect the new legal framework; judges' decisions cannot be ignored. No negotiator may overturn judges' decisions. Once the judges have issued an arrest warrant, the issue is not if indictees should be arrested. But how and when.

The biggest challenges are yet to come. In Darfur, I requested an arrest warrant against President Al Bashir. According to our evidence 2.5 million persons, including a substantial part of the Fur, Masalit and Zaghawa ethnic groups, are today submitted to serious bodily and mental harm and to conditions of life calculated to bring about their physical destruction. They are surviving because the United Nations and other humanitarian organizations are providing assistance. Al Bashir is providing no meaningful assistance to them; on the contrary his agents are blocking humanitarian assistance and promoting insecurity in the camps. Al Bashir's forces rape girls and woman each day in and around the camps.

Al Bashir has all the rights to submit his legal observations to the Court.

The decision rests with the judges.

My request is that the Sudan itself must implement the Court's decisions. If it refuses, regional organizations have a big responsibility in finding solutions. I have visited African and Arab countries in the recent months explaining the focus of my investigation. They are tired of double standards; justice for my enemies; protection for my friends; justice for the weak; impunity for the powerful. This is an opportunity to establish the same standards of justice, for all. This can be our contribution. When we have jurisdiction, we investigate and prosecute, applying to all the same standards. There are no Governments and no rebels in the Court, they are no victors and vanquished in the Court, there are no friends and enemies. There is one law, applying to all.

The International Criminal Court represents a unique opportunity for the world to come together. To protect each citizen of the world. As the South African Minister of Justice said "to contribute to the attainment of international peace."

I know there are skeptics. It is impossible. Or people are saying: What can I do?

Each of us has a role to play. Judges and Prosecutors, States and international organizations will not be enough; we need global citizens to create a global community.

Citizens that understand the contemporary meaning of the word "community". In the 21st century my community is my neighborhood, my city, my country, my region and my world.

Individuals will make the difference.

Human rights defenders, victims daring to speak up.

Young diplomats adding that one extra bullet point in the "talking points" they submit to Ministers for their bilateral meetings.

And the Ministers deciding, one day, in Copenhagen, in San José, in Tokyo, in Dakar, to actually read the bullet point. Just a reminder to their interlocutors that the world is not looking away.

Individuals have always made the difference.

Let me conclude by recalling the power of one citizen: Rafael Lemkin. He was just a citizen. A citizen who decided to do something.

He gave himself a mission: "my basic mission in life is to create a law among nations for the protection of national, racial and religious groups from destruction." He worked tirelessly to promote a Treaty prohibiting the crime of Genocide. He sent thousands of handwritten letters to Ambassadors. He said, and I quote him, "I learned to love the obstacles by making them a test of my moral strength."

And you know what?

Lemkin succeeded.

The Genocide Convention was signed in 1948. Lemkin succeeded.

The Rome Treaty, creating a permanent court to prosecute genocide was approved in 1998. 10 years later the Court is in motion. Lemkin succeeded. Humanity can learn.
