

KEYNOTE ADDRESS: INTEGRATING THE WORK OF THE ICC INTO LOCAL JUSTICE INITIATIVES

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Let me start by explaining to you why I believe the topic of this event—International Criminal Tribunals in the 21st Century—is so important. The Rome Statute creates a system that is not only about the ICC—it is about national systems. It is important that we have almost one hundred states committed to preventing and punishing crimes against humanity, genocide, and war crimes. I believe that the most important work is not what has happened in The Hague; the most important work is what has happened in these one hundred states. This is a way in which we can really succeed and use the Court to help change the world. We have to investigate and to prosecute, but the issue is how we can have an impact on national systems.

I would like to differentiate five moments in the work of the Court and to connect these moments to national initiatives. The first moment is the selection of situations. The second moment is the investigation of a case. We then have two other moments: Court proceedings and decisions. The fifth moment is the impact that we have after the trials. We will undertake only a few situations, and in those, only a few cases. We must therefore discuss how to maximize the impact of trials because my real duty is to investigate and prosecute in order to contribute to the prevention of future crimes.

* Chief Prosecutor, International Criminal Court. These remarks were presented at a conference on “International Criminal Tribunals in the 21st Century” hosted by the War Crimes Research Office of the Washington College of Law, American University, on September 30, 2005.

Legal scholars and lawyers usually focus on court proceedings and decisions, which is important. I also need legal scholars to discuss standards for the selection of cases and the investigation. I am therefore here to present to you a number of challenges that we face in the hope that you can develop solutions.

I will begin with the issue of selection. Gravity is one of the most important criteria for selection of our situations and cases. The Congo is the gravest situation under our treaty jurisdiction, and Northern Uganda is the second gravest. Darfur, referred to the Court by the Security Council,¹ is even graver still. My three situations are in Africa precisely because of the gravity criterion.

I have to focus on gravity. The gravity criterion presents a number of challenges, however. One factor is the number of victims, particularly of the most serious crimes such as killings, because killings are normally reported. Another factor is the impact of crimes. In the Congo a few months ago, guerrilla groups attacked and killed ten Blue Helmets; their goal was to force the U.N. to withdraw. It would be catastrophic without the U.N. in the east of the Congo. Is gravity just the number of killings, or is it other factors, with wider-scale implications?

Another challenge that we face is in relation to standards for admissibility. In Uganda, much of the international community is supporting peace efforts and looking at traditional justice. In Colombia, the international community supports punishment, which means that Colombians are not getting support for their own plan. Some people say that Colombia has to require a higher standard. Some people say no, why should there be a higher standard? The Rome Statute is a treaty with one hundred states, all of which have the same standard.

The final challenge that I would like to present to you is a classic one—the interaction between peace and justice. Normally, peace and justice are integrated; but they do not necessarily follow a linear peace-then-justice trajectory. However, let me present to you one example of how people have a different view on the issue.

When I started the Uganda case, I received a visit from an ambassador. He tried to explain to me that investigation was wrong;

1. See S.C. Res. 1593, U.N. Doc. S/RES/1593 (Mar. 31, 2005).

that I was destroying the chances of making peace in Uganda. I listened to him carefully, and I said to him that the Statute says that I have to respect the interests of victims. This may mean that I can delay an investigation, if it is in the interests of victims. We start here to integrate the concepts of peace and justice. It is the judges who may then review my decision.

I told the ambassador that he would have to give me evidence that the peace effort will stop the violence and would thus be in the interests of victims. The ambassador explained to me, however, that it was not something where one could provide evidence. A peace process is like a little light at the end of the tunnel.

What we did was the following. My duty is to investigate and to prosecute. We decided to investigate and to prosecute, but to conduct the investigation in a very low-key way, and try not to interfere with the peace efforts. At the end, the peace efforts collapsed, but not because of our investigation. It collapsed because the rebels were not really ready to make peace. So in this way, we allowed them to negotiate peace efforts. I then discussed the role of the prosecutor with the local leaders. I explained to them that we have to respect the victims and that if they can do this, then they could proceed with their negotiations. I had to keep my investigation going, but I would not interfere with the peace process. The solution that we found was to combine peace and justice.

However, what happens if they one day reach an agreement? What happens when the leaders of a rebel group are ready to stop the massacres, return the weapons and dismantle the groups, but call for an end to the investigation? What, then, do I have to do?

Can we do an informal survey here now? Please raise your hand if you believe that I should stop my investigation on the condition that the rebel leaders are ready to stop the massacres, return the weapons, and dismantle the groups? Please raise your hand if you believe that I cannot do that?

I see that there are many neutral people here. There is a slight “no” majority, but it varies. Even this informal survey illustrates that people are uncertain about what to do. One of the challenges that we face in relation to peace and justice is that we have to develop criteria.

We must first understand the meaning of the interests of victims. There is an article in the Rome Statute, Article 53(2), that refers to “the interests of victims.”² The interests of victims are not just about peace. They can also include security, for instance. Take the following situation. If I decide that the only way to proceed with a case is if I am sure that no one will be killed, this means that any rebel or any State could kill twenty people to stop me from proceeding with the case. If, on the contrary, I ignore the killings, then I do not respect the interests of victims. How can I manage this? What is the meaning of “the interests of victims”? People say that because we proceed with the case, we serve the interests of victims in the long run. They say that in any event, the guerrillas will kill people and not to worry about this. But I have to worry, because people could be killed because of my decision. So again, what is the standard? What are the criteria?

I would now like to address the issue of local justice initiatives. Our investigation and prosecution is just one piece of the justice activities. For instance, in northern Uganda, the crimes were committed there for the last nineteen years, but we can investigate only those committed after July 1, 2002. We decided to investigate only those who bear the greatest responsibility. What about the other perpetrators? What do we do with the other crimes? What is the role of local justice initiatives?

Amnesties are an example of local justice. Allow me to illustrate to you a challenge that we face with regards to amnesties. A couple of months ago, I attended the meeting on Guidelines for United Nations Representatives in Certain Aspects of Negotiations for Conflict Resolution. The Guidelines prohibit amnesties for war crimes, crimes against humanity, and genocide. The U.N. has since reiterated this key principle in other public reports and documents.³ However, there is a real disconnect between legal scholars and the practioners making peace.

2. Rome Statute of the International Criminal Court, July 17, 1998, art. 53(2)(c), U.N. Doc. A/CONF.183/9 (1998) [hereinafter Rome Statute].

3. E.g., The Secretary-General, *Report of the Secretary-General on the Establishment of a Special Court for Sierra Leone*, ¶ 22, U.N. Doc. S/2000/915 (Oct. 4, 2000).

For instance, I received in the same week two letters that illustrate these two very different perspectives on the issue of amnesties. One letter came from Amnesty International, telling me to ignore the amnesty law in Uganda because international law, which does not recognize amnesties for serious violations, must prevail. In the same week, I received a letter from a paramount chief. He said that the amnesty law is a decision of the local people to reintegrate the children that were abducted and forced to become child soldiers. I must respect the amnesty law, he continued, because the amnesty law is not impunity. He said that they will apply traditional African mechanisms based on truth, reconciliation, and compensation.

The issue for me is how to integrate these different elements. In other words, how do we integrate the activity of the Court to prosecute the leaders with other initiatives, such as local mechanisms, because we cannot prosecute every single perpetrator. What is the right standard? We must understand this dynamic between legal scholars and practitioners and develop standards for those implementing peace and those pursuing prosecutions.

Another area in which discussions are needed is in relation to a decision not to prosecute, pursuant to Article 53 of the Rome Statute.⁴ What, then, is the role of local justice initiatives?

Let me now turn to the issue of impartiality. What is the meaning of impartiality to an international prosecutor? There are allegations of crimes committed by the UPDF, the Ugandan army. Some people say that the only way to retain our impartiality is to prosecute both the LRA and the UPDF. However, I think that impartiality means that we apply the same criteria equally to all sides. A major criterion is gravity. There is no comparison of gravity between the crimes committed by the Ugandan army and by the LRA—the crimes committed by the LRA are much more grave than those committed by the Ugandan army. I continue to collect information on allegations against the UDPF. Then I will determine whether the gravity and complementarity requirements of the Statute are met for an investigation.

What I present to you today are some of the issues that I have to define or decide each and every day. Legal scholars must understand

4. Rome Statute, *supra* note 2, art. 53.

and discuss these examples, and develop standards with regards to selection, peace and justice, and local justice initiatives.

Academic debate is needed, because the Court is a new system. The Court is based on different assumptions than a normal court. We have a treaty, we have committed States, and we are independent. The issues that I face as an international prosecutor are different than those of a national prosecutor. A prosecutor in the United States does not have to convince the Senate to support his activities, nor convince the chief of police to follow his instructions. He has a police force at his disposal. I have none of this. In effect, I am a stateless prosecutor.

This difference is also illustrated by the fact that any criminal court is based on the idea that there is State control over the territory and over its forces. We have a case only when the State has no control over the forces and when groups are killing people. This is the best scenario: when no one controls the forces. The worst scenario is when the State has a monopoly of forces, but the State is killing people. In both cases, we need other actors to cooperate with us. Of course, States Parties have treaty obligations of cooperation, but we need support going beyond that.

My activities must be based on understanding the situation and on convincing other actors to work closely with us. I have to explain to them that I only prosecute the leaders; they can deal with the other perpetrators. I have to keep in my role of prosecutor, but I have to interact with other actors so that we can combine our efforts. We intend to be clear about this and about how we go about doing this.

And of course, each time that I do this, I talk openly, but I do not look like a prosecutor. People ask, "Why is the prosecutor talking about peace? Why is the prosecutor talking with the president of the country? Why is the prosecutor meeting with traditional leaders? It is not his role." But it is necessary to carry out my mandate. This is part of the challenge that I face.

Outreach then becomes a very important issue. It is not about putting something in the media; it is about understanding different actors from local to international areas and to have them support the investigation. This is an important part of my role.

I would like to finish by reiterating that I have six years and eight months remaining of my work as chief prosecutor of the Court. In

the next six years, we will probably do six to eight cases, which will demonstrate how the Court works. The Court will evolve.

I also hope that we can dramatically reduce the occurrence of massive crimes, in which millions of people are displaced and millions of people die. I think that in seven or ten years the Court will have an impact. We can stop genocide, prevent crimes against humanity, and prevent massive crimes. This is an incredibly difficult goal.

We need your support to achieve this: scholars and others must help to develop standards, and engage other actors to think not just about the elements of crimes or cross-examination, but also about an integrated approach. We have to think more about what the political scientists are saying and about what the economists are saying. In order to integrate different initiatives, we must think about how to integrate our views with the views of other actors.

I will conclude by stressing once again the need for an integrated approach. Ninety percent of the members of the LRA are children who have been abducted. They are forced to kill people in their own village and to destroy their relations with their local community. Girls are forced to become sex slaves. It is an awful situation. There are stories about a few children that have escaped from the LRA and who returned to their village, but were not welcomed. They have nothing. They cannot find a place to stay. They have no choice but to return to the LRA. We cannot offer these children anything better than the LRA.

Even if we succeed using different initiatives to stop the crimes and to prosecute those responsible, someone else has to train these children, to offer them job opportunities, a family, and a community. National issues are not just about prosecution, nor are they just a job for lawyers. National issues are the job of an entire community. This is why we must think about an integrated approach and how to combine justice with other areas, such as rehabilitation and development, in order to produce better communities.