De lobby van het International Criminal Court

Een analyse van de keuze van de aanklager van het ICC voor bepaalde lobbymethoden

Bachelor scriptie Internationale Politiek

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Datum:	17-06-2013
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Abstract

De aanklager van het International Criminal Court lobbyt bij de lidstaten van het ICC. Hij lobbyt voor de bevordering van de arrestatie en uitlevering van verdachten van het ICC. Op welke manier de aanklager dit doet en waarom hij bepaalde lobbytactieken gebruikt wordt geanalyseerd in dit onderzoek. Door middel van een inhoudsanalyse van *diplomatic briefings,* die ongeveer twee keer per jaar worden gegeven door de president, hoofdaanklager en secretaris van het Hof, wordt onderzocht welke lobbytactieken op welke momenten door de aanklager worden gebruikt. Geconcludeerd wordt dat er twee dingen van invloed zijn op het gebruik van lobbytactieken door de aanklager. Specifieke gebeurtenissen hebben invloed op de hoeveelheid lobbytactieken die gebruikt worden. Deze geven de aanklager een aanleiding om te benadrukken dat de verdachten van het ICC gearresteerd en uitgeleverd dienen te worden. Ten tweede heeft de aard van het ICC invloed op de tactieken die de aanklager gebruikt. Het ligt in de aard van het ICC om meer waarde te hechten aan feiten en verdragen. Er wordt meer gebruik gemaakt van lobbytactieken die gebaseerd zijn op feiten en verdragen dan lobbytactieken die hier minder gebruik van maken.

Inleiding

Wereldwijd gingen mensen in de nacht van 20 april 2012 de straat op om overal rode posters te plakken met de tekst ‘Kony 2012’. De organisatie ‘Stop Kony’ probeerde hiermee aandacht te vragen voor de misdaden die gepleegd zijn door het *Lord Resistance Army* (LRA) onder leiding van Joseph Kony. De korte documentaire die tevens door de organisatie via YouTube is verspreid is wereldwijd door meer dan 100 miljoen mensen bekeken. In de documentaire verteld de documentairemaker zijn zoontje over de misdaden van Joseph Kony. Hij roept op om de wereld een betere wereld te maken. De arrestatie van Joseph Kony zou hiertoe de eerste stap zijn. Door de misdaden van de LRA overal bekend te maken hoopt de organisatie dat overheden actie zullen ondernemen tegen Joseph Kony. Naast een uiteenzetting van de misdaden van het LRA werd de hoofdaanklager van het *International*

Criminal Court (ICC) geïnterviewd in de documentaire. De hoofdaanklager riep de staten ook op om actie te ondernemen tegen het LRA. [1]

Sinds het midden van de jaren 80 is er onder andere door mondialisering een nieuw soort oorlog ontstaan. Volgens Sheehan zijn deze moderne conflicten vaak het gevolg van de disintegratie van staten, waardoor een strijd over de controle van het land ontstaat (2008, p.221). De assumptie dat oorlog tussen twee staten plaatsvindt en niet binnen een staat is gebaseerd op de Vrede van Westfalen in 1648; conventionele oorlogen tussen twee verschillende staten werden gereguleerd door formele regels. Er zijn echter steeds vaker milities en paramilitairen betrokken bij een conflict (2008, p. 222). De formele regels opgesteld bij de Vrede van Westfalen zijn daardoor niet altijd meer toepasbaar. Er worden nu grenzen gesteld aan de absolute staatsoevereiniteit die vanaf 1648 bestond. Wanneer een staat zijn bevolking niet kan beschermen tegen gruwelijkheden, zoals genocide, dan is de internationale gemeenschap hiervoor verantwoordelijkheid volgens de *responsibility to protect* norm en komt de absolute staatsoevereiniteit dus te vervallen (Contarino, Negrón-Gonzales en Mason 2012, p.277). Het ICC is opgericht en is onderdeel van het *criminal justice regime* (Mills 2012, p. 407). Het Hof is opgericht op wreedheden tegen te gaan en is het meest recente en meest krachtige geïnstitutionaliseerde vertegenwoordiging van dit regime. De internationale normen zijn aangepast aan de nieuwe vorm van conflicten. Het internationaal recht heeft hierdoor ook een verandering doorgemaakt.

Deze verandering is te zien in de oprichting van het ICC om de straffeloosheid van daders van oorlogsmisdaden binnen de moderne conflicten tegen te gaan. Op 1 juli 2002 werd het Rome Statuut, waarop het ICC is gefundeerd, van kracht.[2] Sinds 2002 zijn er 18 zaken uit 8 oorlogssituaties voor het ICC gebracht.[3] De aanklager kan volgens het Rome Statuur op drie verschillende manieren een onderzoek beginnen. Ten eerste kan hij dit doen wanneer een lidstaat een zaak doorverwijst naar het ICC. Ten tweede kan een zaak doorverwezen worden naar het ICC door de VN Veiligheidsraad. Tenslotte kan de aanklager besluiten een onderzoek te starten wanneer hij informatie over misdaden heeft ontvangen van individuen of organisaties.[4] Een van de zaken die voor

[1] Van der Velden, L. 20-04-2012. 'Kony-kijkers moeten nu Kony-plakkers worden; Climax van Kony 2012 is guerillamarketing in de stad', *NRC Handelsblad*

[2] International Criminal Court. 'About the Court' *http://www.iccpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx*, 3-5-2013

[3] International Criminal Court. 'Situations and Cases' *http://www.icccpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx,* 3-5-2013

[4] International Criminal Court. 'Situations and Cases' *http://www.icccpi.ink/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx,* 15-6-2013

de rechtbank werd gebracht door de aanklager na een doorverwijzing van een lidstaat is het conflict in Oeganda. Joseph Kony wordt ervan verdacht dat er onder zijn leiding oorlogsmisdaden worden gepleegd door het LRA. Aanvankelijk werden deze misdaden alleen in Oeganda gepleegd. Later werd het LRA ook actief in de Democratische Republiek Kongo en in Sudan.

Wetenschappelijk onderzoek naar het functioneren van het ICC heeft zich tot nu toe hoofdzakelijk gericht op het functioneren van het rechtssysteem. Een voorbeeld van een onderzoek hiernaar is het onderzoek van Michail Vagias dat zich heeft gericht op het vraagstuk van de jurisdictie van het ICC binnen het grondgebied van staten (2012). Andere onderzoeken richten zich op ontstaan van het ICC zoals het artikel van Welch en Watkins (2011) of zoals het artikel van Bikundo (2011) over het effect van specifieke rechtszaken die door het ICC behandeld zijn, in dit geval het effect op Afrika. Er is echter minder aandacht geschonken aan het werk van het Hof voordat een verdachte terecht staat in de rechtbank. De hoofdaanklager van het ICC is onderwerp van wetenschappelijk onderzoek wanneer het gaat over de juridische aspecten van zijn werk. Een voorbeeld hiervan is het onderzoek van Rauxloh waarin onderzocht wordt in hoeverre *plea bargains* noodzakelijk zijn voor de aanklager (2011).[5] Door theorieën vanuit de internationale politiek toe te passen op deze internationale organisatie wordt er in dit onderzoek geprobeerd om meer zicht te krijgen op het proces voor de terechtstelling.

Dit onderzoek richt zich op het werk van de aanklager voor het daadwerkelijke begin van het proces tegen de verdachte, iets wat tot nu toe nog niet is onderzocht. Het onderzoek richt zich op de vraag waarom er gekozen is voor bepaalde tactieken. Er wordt onderzocht of de unieke aard van het ICC hier invloed op heeft. Tot op heden is er nog geen onderzoek gedaan naar de invloed van de aard van de actor op de gekozen lobbytactieken.

Het Rome Statuut heeft individuele criminele verantwoordelijkheid in internationaal recht bekrachtigd in gevallen van genocide, misdaden tegen de menselijkheid en agressie in oorlogssituaties. Een land dat het statuut geratificeerd heeft de verantwoordelijkheid om verdachten van het ICC, tegen wie een arrestatiebevel is uitgevaardigd, te arresteren en uit te leveren. Verder dienen staten samen te werken met het Hof, als het Hof daarom vraagt (Mills 2012, p. 408-409). Het ICC is afhankelijk van de medewerking van staten om haar wensen uit te voeren. Staten hebben echter ook hun eigen belangen die kunnen overlappen of tegenstrijdig kunnen zijn met de wensen van het ICC. Hierdoor kunnen er conflicten ontstaan over de interpretatie en het belang van deze

[5] Met een *plea bargain* wordt het onderhandelen van de officier van justitie met de verdachte over de op te leggen straf of de ten laste te leggen feiten bedoeld.

belangen en normen. De norm van absolute staats soevereiniteit kan in deze gevallen conflicteren met nieuwere normen voor mensenrechten (2012, p. 407).

De openbaar aanklager kan gebruik maken van lobbymethoden om de staten te beïnvloeden. Op deze manier kunnen de conflicten tussen verschillende belangen en normen eventueel worden voorkomen of in het voordeel van de aanklager worden beslist. De lidstaten van het ICC dienen te voldoen aan hun verplichtingen richting het ICC door bijvoorbeeld een verdachte uit te leveren en dienen niet uitsluitend hun eigen belang na te streven. Door te lobbyen kan de aanklager van het ICC dit bevorderen. De onderzoeksvraag die in dit onderzoek centraal staat is: Waarom gebruikt de aanklager van het International Criminal Court specifieke lobbymethoden?

De onderzoeksvraag zal onderzocht worden door middel van een *case study*. De casus in dit onderzoek is de zaak aanklager vs. Joseph Kony. In deze zaak is de verdachte, Joseph Kony nog niet gearresteerd. Het hof is geheel onafhankelijk.[6] In deze scriptie wordt geen onderzoek gedaan naar de rechters van het ICC en er wordt aangenomen dat zij neutraal handelen in hun functie. In dit onderzoek staan de handelingen van de openbaar aanklager van het strafhof centraal. Deze geeft ongeveer tweemaal per jaar een diplomatieke briefing aan de lidstaten van het ICC. Dit is een directe manier van communicatie tussen het Hof en de lidstaten. Door middel van een inhoudsanalyse van deze briefings zal onderzocht worden op welke manier de aanklager de lidstaten probeert te beïnvloeden. De aanklager kan druk uitoefenen op individuele staten om verdachten uit te leveren. Er kan echter ook druk uitgeoefend worden op de internationale gemeenschap als geheel zodat zij op hun beurt druk uit willen oefenen op individuele staten. Er wordt verwacht dat de aanklager van het ICC gebruik maakt van lobbymethoden om de druk op de internationale gemeenschap en individuele staten te vergroten. Op die manier kan bijvoorbeeld de aanhouding van Kony worden versneld.

Een aantal concepten zal eerst uiteen worden gezet voordat geanalyseerd kan worden op welke manier de aanklager van het ICC lobbymethoden gebruikt om uitlevering van verdachten te bevorderen. Het concept van normen zal eerst verder uitgediept worden, specifiek de *responsibility to protect* norm en de uitleveringsnorm. Vervolgens zal besproken worden op welke manier de aanklager de staten kan beïnvloeden. De vier verschillende lobbytactieken die Keck en Sikkink uiteengezet hebben zullen hierbij besproken worden (1999). Deze tactieken zullen worden toegepast op de diplomatieke briefings gegeven door de hoofdaanklager. Voordat er geanalyseerd kan worden waarom de aanklager gebruikt maakt van specifieke lobbymethoden zal er eerst uiteengezet worden

[6] International Criminal Court. 'About the Court' *http://www.icccpi.int/en_menus/icc/about%20the%20court /Pages/about%20the%20court.aspx,* 15-6-2013

welke methoden de aanklager precies gebruikt heeft. Tenslotte zullen er conclusies getrokken worden uit de resultaten en zal er een advies gegeven worden voor toekomstig onderzoek.

Theoretisch kader

Normen

Het eerste concept dat uitgediept dient te worden zijn normen, specifiek de uitleveringsnorm. Een definitie van een norm is volgens Finnemore en Sikkink: *'the embodiment of quality of "oughtness" and shared moral assessment, norms prompt justifications for action and leave an extensive trail of communication'* (1998, p.892). Finnemore en Sikkink hebben een model ontwikkeld waarin zij een drietal stadia aangeven waarin een norm zich kan bevinden. Deze stadia zijn achtereenvolgend *norm emergence, norm cascade* en *internalization* (1998, p. 896). Het eerste stadium, *norm emergence*, betreft een stadium waarin een nieuwe norm door norm entrepreneurs onder de aandacht wordt gebracht (1998, p. 897). Voordat de norm het tweede stadium kan bereiken dient deze geïnstitutionaliseerd te worden door internationale organisaties en binnen internationale regels (1998, p. 900). Binnen deze tweede fase, *norm cascade*, zal er een toename zijn van staten die de norm accepteren. Door middel van internationale socialisatie zullen steeds meer staten de norm handhaven (1998, p. 902). In de laatste fase, *internalization*, is de norm volledig geïnternaliseerd. Het is dan vanzelfsprekend dat de norm er is (1998, p. 904).

De norm *responsibility to protect* gaat net als het ICC uit van het principe van complementariteit. Dit houdt in dat de primaire verantwoordelijkheid voor de veiligheid en bescherming van burgers bij de individuele staten ligt. Op het moment dat de staten echter falen hun eigen bevolking te beschermen tegen gruwelijkheden dient de internationale gemeenschap deze taak op zich te nemen. Staten dienen zich namelijk aan de Universele Verklaring van de Rechten van de Mens te houden (Contarino, Negrón-Gonzales en Mason 2012, p. 277).

De *responsibility to protect* is een norm in wording. Formeel is deze norm aangenomen door de Verenigde Naties en hoewel er veel naar de norm gerefereerd wordt door de internationale gemeenschap is deze nog steeds controversieel. Het is nog niet vanzelfsprekend dat er in alle gevallen ingegrepen wordt door de internationale gemeenschap met deze norm als fundering

hiervoor. De definitie van de norm is nog niet universeel geaccepteerd. Hij kan op verschillende manieren worden geïnterpreteerd (Contarino, Negrón-Gonzales en Mason 2012, p. 275-276). China, India en Rusland grijpen vaak terug op de absolute soevereiniteit van de staat en vinden dat de norm daar teveel inbreuk op maakt. Verzet tegen de uitvoering van de norm in conflictsituaties is daarnaast gegroeid sinds coalitietroepen Irak binnen zijn gevallen in 2003 (Axworthy en Rock 2009, p. 54). Wanneer de theorie van Keck en Sikkink wordt toegepast op deze norm dan is te zien dat deze norm in de tweede fase van *the norm life cycle* geplaatst kan worden (1998, p. 902). Hoewel de norm formeel is aangenomen door de Verenigde Naties, wordt er niet altijd als vanzelfsprekend naar gehandeld.

De *responsibility to protect* norm verplicht regeringen om genocide, oorlogsmisdaden, misdaden tegen de menselijkheid en etnische zuiveringen te voorkomen en te stoppen. Het ICC is met deze norm verbonden. Het Hof heeft een mandaat om de daders van genocide, oorlogsmisdaden, misdaden tegen de menselijkheid en misdaden van agressie te vervolgen (Contarino, Negrón-Gonzales en Mason 2012, p.277). Het ICC is daarmee verantwoordelijk voor de juridische uitvoering van de norm *the responsibility to protect.*

Wanneer een staat het Rome Verdrag geratificeerd heeft is het juridisch verplicht om een arrestatiebevel van het ICC uit te voeren. Daarmee wordt volgens Contarino, Negrón-Gonzales en Mason *the responsibility to protect* uitgevoerd door dat desbetreffende land (2012, p.289). Het uitleveren van verdachten aan het ICC kan daarmee gezien worden als een uitleveringsnorm die verbonden is aan de norm van *responsibility to protect.* Het ICC en de *responsibility to protect* norm richten zich op dezelfde misdaden. Toch wordt er niet expliciet naar de norm gerefereerd door het Hof. Dit kan volgens de auteurs erop wijzen dat de norm voor het Hof nog niet specifiek genoeg gedefinieerd is of dat de norm nog te controversieel is. De acties van het Hof betreffende de norm geven aanwijzingen voor het feit dat er rekening gehouden wordt met de politieke limitaties en de mogelijke controversie die expliciete verwijzing naar de norm mogelijk met zich mee kunnen brengen. Regeringen, organisaties en ICC medewerkers geven echter wel aan dat het ICC een rol kan spelen in het verder definiëren en bekrachtigen van de norm. De voormalig hoofdaanklager van het ICC, Luis Moreno-Ocampo, heeft bijvoorbeeld aangegeven dat het ICC legitimiteit kan toevoegen aan de beslissing van de VN Veiligheidsraad gebruik te maken van de *responsibility to protect* (2012, p.298).

De uitleveringsnorm wordt net als *the responsibility to protect* niet door alle staten geaccepteerd. De norm is echter wel opgenomen in internationale verdragen, zoals het Rome Statuut. Deze norm bevindt zich daarom in de tweede fase van het model van Finnemore en Sikkink over de drie verschillende stadia van normen. De norm wordt niet altijd nageleefd door staten die de norm officieel hebben geaccepteerd; een aantal verdachten van het ICC is namelijk nog steeds voortvluchtig. Het desbetreffende land heeft de verdachte om verschillende redenen nog niet kunnen en/of willen arresteren en uitleveren. Naast de voortvluchtige verdachten in Oeganda zijn onder andere de vier verdachten in de casus Darfur in Sudan ook nog steeds voorvluchtig. Twee andere verdachten in deze zaak, Mr. Banda en Mr. Jerbo, hebben zich vrijwillig gemeld bij het ICC.[7]

Macht van het ICC

Het hebben van macht wordt in de internationale politiek gedefinieerd als het vermogen van actor A om actor B te beïnvloeden waardoor deze zich op een andere manier gaat gedragen dan de actor eigenlijk van plan was. Macht kan onderverdeeld worden in twee soorten macht, *hard power* en *soft power. Hard power* is de macht van actor A om actor B anders te laten handelen (Art 1996 in Wilson 2008, p. 114). *Soft power* is echter de macht om de ander te overtuigen te doen want jij wilt (Nye 1990 in Wilson 2008, p. 114). Volgens het artikel van Wilson maken de verschillende vormen van macht ook gebruik van verschillende middelen om hun doel te bereiken. De strategieën van *hard power* zullen zich hoofdzakelijk richten op militaire interventies, dwingende diplomatie en economische sancties. Deze vorm van macht wordt dan ook vooral toegeschreven aan staten. *Soft power* maakt vooral gebruik van overtuigingskracht en het aantrekkelijk maken van de gewenste uitkomst. Naast staten beschikken ook internationale organisaties over deze vorm van macht (Wilson 2008, p. 114).

Als een internationale organisatie heeft het ICC in tegenstelling tot een staat alleen de mogelijkheid om *soft power* te gebruiken om invloed uit te oefenen. Het ICC is afhankelijk van een bijdrage van haar lidstaten en giften van onder andere internationale organisaties en individuen om haar uitgaven te kunnen financieren.[8] Het Hof heeft echter wel beschikking over overtuigingskracht om een staat te overtuigen om naar haar te luisteren en kan bepaalde keuzes aantrekkelijker maken. Eventuele sancties of interventies kunnen alleen vanuit lidstaten van het ICC worden opgelegd aan verdachten

[7] International Criminal Court. 'Situations and Cases' *http://www.icccpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx*, 15-6-2013

[8] International Criminal Court. 'About the Court' *http://www.icccpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx,* 18-5-2013

of staten. Door gebruik te maken van overtuigingskracht en aantrekkingskracht kan het ICC een staat ervan overtuigen een verdachte uit te leveren. Daarnaast kan het ICC de andere lidstaten stimuleren om de druk op te voeren ten opzichte van deze staat. Beide opties kunnen ervoor zorgen dat verdachten sneller uitgeleverd worden aan het ICC en de rechtszaak tegen deze verdachten kan beginnen. Lobbyen is een voorbeeld van hoe het ICC gebruik zou kunnen maken van overtuigingskracht en aantrekkingskracht om uitlevering mogelijk te maken of te bespoedigen.

De openbaar aanklager lobbyt in dat geval voor de uitvoering van de uitleveringsnorm en indirect voor *the responsibility to protect.* De manier waarop de openbaar aanklager lobbyt bij staten zal onderzocht worden aan de hand van de classificatie van lobbymethoden door Keck en Sikkink (1999). Zij stellen dat er gebruik kan worden gemaakt van verschillende tactieken en frames om het gedrag van anderen te veranderen. Een frame kan een gebeurtenis belangrijk maken door ervaringen op een specifieke manier te presenteren. Hierdoor wordt er richting gegeven aan de mening en actie van de ontvangende actor. Door informatie op een bepaalde manier te interpreteren en te presenteren wordt getracht het gedrag van anderen te beïnvloeden (1999, p.95).

Keck en Sikkink classificeren vier verschillende tactieken die een lobby groep kan toepassen: *information politics, symbolic politics, leverage politics* en *accountability politics*. *Information politics* wordt toegepast door die informatie te gebruiken die het gewenste en grootste effect heeft. De tactiek maakt voornamelijk gebruik van feiten en getuigenissen. Deze worden echter aangeboden met het doel richting te geven aan de acties van anderen. Dit kan inhouden dat alleen feiten gebruikt worden die een specifiek aspect belichten en andere aspecten onderbelicht laat. Hoewel er gebruik wordt gemaakt van een frame, heeft deze tactiek ook als effect dat er informatie wordt verschaft die anders misschien niet bekend was geworden (1999, p.95). Naast feiten kan er volgens de auteurs ook gebruik gemaakt van getuigenissen. Deze worden geïnterpreteerd aangeboden in termen van goed en fout. Hierdoor wordt er richting gegeven aan de acties van anderen. Het doel van de tactiek is om anderen te overtuigen en hen te stimuleren actie te ondernemen. Door te laten zien dat een situatie niet natuurlijk of onopzettelijk is, wordt er een schuldige aangewezen en aangestuurd op de gewenste oplossing (1999, p.96).

De tweede lobbytactiek die volgens Keck en Sikkink gebruikt kan worden is s*ymbolic politics.* Hierbij wordt gebruik gemaakt van symbolen, acties en verhalen om een situatie te duiden of om een publiek aan te spreken en dat publiek dat meestal ver weg is aan zich te binden (1999, p.95). Er wordt binnen deze tactiek ook gebruik gemaakt van een frame. De symbolische gebeurtenissen worden geïnterpreteerd aangeboden. Er worden verklaringen geboden voor deze gebeurtenissen. Andere

verklaringen lijken onlogisch door het selectieve en geïnterpreteerde aanbod van symbolische gebeurtenissen. De methode wordt gebruikt om actoren over te halen door bewustwording te creëren (1999, p.96). Vaak is het niet één gebeurtenis die mensen overhaalt om hun mening of gedrag aan te passen. Het is een combinatie van gebeurtenissen waardoor me van mening veranderd en actie onderneemt (1999, p. 97).

Leverage politics is de mogelijkheid een beroep te doen op machtige actoren om een situatie te beïnvloeden (1999, p. 95). Het doel is om invloed uit te oefenen op specifieke actoren. Volgens Keck en Sikkink zal er geprobeerd worden invloed uit te oefenen op andere actoren die invloed hebben op deze specifieke actoren. Het beleid wordt dan indirect beïnvloed. Op deze manier kunnen de zwakkere actoren meer invloed hebben op de uitkomst dan zij hadden gehad wanneer ze deze direct hadden proberen te beïnvloeden. Er zijn twee verschillende vormen van macht die ze over andere actoren uit kunnen oefenen; *material leverage* en *moral leverage*. *Material leverage* houdt in dat een bepaald onderwerp wordt gekoppeld aan iets van waarde. Hierbij kan gedacht worden aan geld of goederen maar bijvoorbeeld ook belangrijke functies binnen organisaties. *Moral leverage* houdt zich niet bezig met materiële zaken, maar houdt het gedrag van actoren tegen het licht. Dit onderzoek naar het gedrag van de actoren kan mogelijk uitkomsten hebben die negatief zijn voor de reputatie van de actor. Wanneer de onderzochte actor waarde hecht aan zijn reputatie en internationale prestige dan kan hun gedrag veranderen door de mogelijkheid op schaamte (1999, p.97).

De laatste van de vier tactieken die Keck en Sikkink hebben geclassificeerd is *accountability politics.* Hierbij wordt getracht om machtigere actoren te verplichten zich aan eerder onderschreven beleid en/of principes te houden (1999, p. 95). Wanneer een regering publiekelijk een norm of regel heeft onderschreven dan kan er gebruik worden gemaakt van deze methode. De tactiek zal laten zien dat er een verschil zit tussen praktijk en theorie. Hoewel de actor in theorie beleid en principes heeft onderschreven is hier in de praktijk geen sprake van. Wanneer duidelijk wordt gemaakt dat er een verschil zit tussen de praktijk en theorie dan kan dit schadelijk zijn voor de internationale reputatie van de actor. De actor zal deze hoog willen houden en daardoor zijn gedrag aanpassen naar de al eerder onderschreven theorie (1999, p. 97-98).

Het onderzoek zal kijken welke van de vier tactieken die uiteengezet zijn door Keck en Sikkink gebruikt worden door de hoofdaanklager van het ICC. Er zal onderzocht worden waarom de aanklager die methoden gebruikt. Op basis van de theorie die hierboven uiteen is gezet wordt er niet verwacht dat er sprake zal zijn van *material leverage*. Zoals al eerder is besproken is het ICC afhankelijk van de lidstaten voor financiële ondersteuning en uitvoering van hun beleid. Het kan

daarom geen materiële beloningen beloven. Daarnaast wordt er verwacht dat het aard van het ICC een rol zal spelen in de keuze voor bepaalde lobbytactieken. Het ICC is een unieke actor in de internationale politiek. Er wordt verwacht dat dit invloed uitoefent op de keuze voor bepaalde tactieken. De verwachting is dat er doordoor meer gebruik wordt gemaakt van *information politics* en *accountability politics.* Omdat het ICC een gerechtshof is kan er aangenomen worden dat er meer waarde wordt gehecht aan feiten en verdragen. Dit zou de keuze voor deze twee tactieken kunnen verklaren.

Onderzoeksmethode

Om te onderzoeken waarom de hoofdaanklager van het ICC bepaalde lobbytactieken gebruikt wordt een *case study* gebruikt. Er kan in dit geval dus alleen gesproken worden over de gebruikte lobbytactieken voor deze specifieke casus. Er is sprake van een *explanatory* onderzoek, omdat er onderzoek gedaan wordt naar verklaringen van het gedrag van de aanklager. Er is voor dit onderzoek gekozen voor een *case study* gekozen, omdat er tot dusver geen onderzoek is gedaan naar deze rol van de aanklager en de keuze voor bepaalde lobbytactieken. Een *case study* kan als voorbeeld dienen voor verder onderzoek en geeft verwachtingen voor het gebruik van lobbytactieken door de aanklager in het algemeen.

Er is gekozen voor de casus van Oeganda. In december 2003 heeft de president van Oeganda, Yoweri Museveni, de zaak betreffende *the Lords's Resistance Army* (LRA) doorverwezen naar het ICC. De aanklager van het ICC heeft op basis daarvan besloten een onderzoek te starten.[9] Dit was, samen met het onderzoek naar de misdaden die gepleegd waren in de Democratische Republiek Kongo, een van de eerste onderzoeken van het ICC. De resultaten van dit onderzoek zijn voorgelegd aan *de Pre-Trial Chamber* II en deze besloot op 8 juli 2005 een arrestatiebevel uit te vaardigen tegen 5 leden van het LRA. Een van deze verdachten is de leider van het LRA, Joseph Kony. Hij wordt onder andere verdacht van misdaden tegen de menselijkheid, oorlogsmisdaden en het tegen hun wil in rekruteren van

[9] International Criminal Court. 'Press and Media: Press releases 2004' *http://www.icccpi.int/en_menus/icc/press%20and%20media/press%20releases/2004/Pages/president%20of%20uganda%20refers%20situation%20concerning%20the%20lord_s%20resistance%20army%20_lra_%20to%20the%20icc.aspx*, 10-5-2013

kindsoldaten. Tegen vier van deze verdachten geldt het arrestatiebevel nog steeds, een van de vijf is namelijk inmiddels overleden.[10]

De oorlogssituatie in Oeganda was de eerste die doorverwezen werd naar het ICC en de tweede zaak die door de aanklager onderzocht werd. Er is echter nog geen van de verdachten gearresteerd.[11] Dat maakt het interessant om juist deze zaak te onderzoeken. Hoewel de zaak is doorverwezen door de president van Oeganda en het land lid is van het ICC, is geen van de verdachten nog gearresteerd. Deze zaak kan daarom als representatief gezien worden voor andere rechtszaken waarin er nog geen verdachte is gearresteerd. Het zijn deze gevallen waarin de aanklager van het ICC gebruik kan hebben gemaakt van lobbytactieken om de aanhouding van de verdachten te versnellen. De verklaring van de keuze voor specifieke tactieken door de aanklager kan daarom op basis van deze casus vastgesteld worden.

Om dit te onderzoeken is er een combinatie van kwalitatieve en kwantitatieve methoden van data analyse gebruikt. Door middel van een inhoudsanalyse is de inhoud van politieke briefings uiteengezet. De kwalitatief verkregen data is omgezet in kwantitatieve data zodat er gezien kan worden in welke frequentie de verschillende tactieken gebruikt zijn door de aanklager. Om de hoofdvraag te kunnen beantwoorden is er gekeken naar de gebruikte tactieken en hoe deze zich bijvoorbeeld tot gebeurtenissen verhouden.

De data die onderzocht is verzameld door middel van een inhoudsanalyse van *diplomatic briefings.* Deze worden ongeveer twee keer per jaar gehouden door de president, de secretaris en de hoofdaanklager van het ICC. In totaal zijn er 18 speeches geanalyseerd. Deze zijn gehouden in de periode van 8 juni 2005 tot 19 september 2012. In totaal zijn er 22 diplomatieke toespraken gegeven. De eerste drie zijn niet vrijgegeven door het ICC op hun website en zijn niet meegenomen in dit onderzoek. Pas sinds de vierde briefing is de aanklager begonnen met het onderzoeken van mogelijke misdaden in Oeganda en de Democratische Republiek Kongo. Dit waren de eerste onderzoeken die het ICC heeft uitgevoerd. De eerste drie toespraken waren daarom niet van belang voor het onderzoek omdat er geen vermeldingen waren van het onderzoek in Oeganda of naar het uitleveren van verdachten. Binnen de briefings is er gekeken naar specifieke delen van de briefing die gaan over de casus Oeganda in het bijzonder of het uitleveren van verdachten in het algemeen.

[10] International Criminal Court. 'Situations and Cases' *http://www.icccpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200204/Pages/situation%20index.aspx,* 10-5-2013

[11] International Criminal Court. 'Situations and Cases' *http://www.icccpi.int/en_menus/icc/situations%20and%20cases/situations/Pages/situations%20index.aspx*, 10-5-2013

De briefings hebben als doel om de staten die lid zijn van het ICC op de hoogte te houden van de vorderingen in specifieke zaken, maar ook om hen over de algemene gang van zaken in te lichten. De toespraken zijn een directe manier waarop de aanklager van het ICC kan communiceren met de lidstaten. Daarom is er gekozen om de briefings te gebruiken als basis van de inhoudsanalyse.

Delen van de briefings zijn door middel van een inhoudsanalyse gecodeerd als *information politics, symbolic politics, leverage politics* en *accountability politics.* Een deel bestond uit een alinea die door het Hof zelf was geschreven. Het codeerboek (zie appendix A) gaf handvatten voor de analyse. Het coderen als een specifieke tactiek was echter ook afhankelijk van de context van de alinea in de tekst. Wanneer twee tactieken leken te overlappen binnen een alinea is deze als beide gecodeerd.

Delen van de tekst zijn als *information politics* geanalyseerd wanneer er hoofdzakelijk gebruik is gemaakt van feiten en getuigenissen om de staten te overtuigen te handelen en de uitlevering van Kony te bevorderen. De delen van de briefings zijn geïnterpreteerd als *symbolic politics* wanneer er specifieke symbolische gebeurtenissen, acties en verhalen werden vermeld om een situatie te duiden. Door een situatie in een grotere context te plaatsen kan deze ene situatie meer waarde krijgen. Een gebeurtenis of feit wordt op die manier als symbool gebruikt voor een hele situatie. In dit geval is er sprake van symbolische gebeurtenissen om de situatie in Oeganda als geheel te duiden.

Door gebruik te maken van een symbolische gebeurtenis worden de staten opgeroepen om meer actie te ondernemen in de casus Oeganda. Er was sprake van *leverage politics* wanneer er in de tekst een koppeling werd gemaakt tussen een verandering van het gedrag van een actor en een beloning. Dit kon een materiële beloning zijn zoals goederen, maar ook stemmen in een internationale organisatie. Verwacht werd dat er geen sprake zou zijn van deze vorm van beloning omdat het ICC afhankelijk is van de lidstaten voor financiële ondersteuning en de uitvoering van het beleid. Een materiële beloning is daarom niet waarschijnlijk. De beloning kon echter ook van morele aard zijn. Herin werd bijvoorbeeld een betere internationale reputatie voorgehouden als beloning als de staten een actievere rol aannamen in de arrestatie en uitlevering van Kony. Tenslotte is er gekeken naar signalen voor a*ccountability politics.* In dit geval is er sprake van het tot verantwoording roepen van staten, omdat zij een verplichting aan zijn gegaan. Hierbij is er bijvoorbeeld gekeken naar het noemen van eerder gemaakte afspraken, zoals het Rome Statuut.

Resultaten

De resultaten van het onderzoek zullen in twee delen besproken worden. Er wordt eerst gekeken naar enkele algemene resultaten van de inhoudsanalyse. Hier zal besproken worden welke tactieken gebruikt zijn door de aanklager. Daarnaast zal er gekeken worden naar patronen over tijd. Vervolgens zal iedere lobby methode afzonderlijk besproken worden. Hier zal dieper ingegaan worden op de methoden die gebruikt zijn en waarom deze gebruikt zijn.

Wanneer er gekeken wordt naar tabel 1 dan is te zien dat er voornamelijk gebruik is gemaakt van *information politics* en *accountability politics*. Van de 122 keer dat de hoofdaanklager van het Hof gebruik heeft gemaakt van lobbymethoden zijn er 85 geïnterpreteerd als *information politics* en 35 als *accountability politics*. Er is geen sprake van het gebruik van leverage politics. Daarnaast is *symbolic politics* slechts twee keer gebruikt binnen de 18 briefings van de hoofdaanklager van het ICC. Van tevoren werd verwacht dat de aanklager hoofdzakelijk gebruik zou maken van *information* en *accountability politics*. Uit dit eerste overzicht blijkt dat dit inderdaad het geval is.

Wanneer er gekeken wordt naar de patronen over de tijd dan is er te zien dat er een aantal momenten zijn waarop er meer dan gemiddeld gebruikt is gemaakt van een van de vier lobbytactieken. Gemiddeld wordt er 6,7 keer per briefing gebruik gemaakt van een van de vier tactieken. Hierdoor kunnen er een aantal pieken in het gebruik van deze tactieken door de hoofdaanklager worden vastgesteld. Vanaf de 4^{e} briefing van 8 juni 2005 tot en met de 11^{e} briefing van 10 oktober 2007 worden de tactieken meer dan gemiddeld toegepast. Dit is te verklaren door de gebeurtenissen die voor deze briefings hebben plaatsgevonden. De 4^{e} briefing (zie appendix B) volgt op de eerste onderzoeken van het ICC naar de misdaden die gepleegd zijn in Oeganda. De staten worden in deze briefing ingelicht over de vorderingen van dat onderzoek. Omdat het een van de eerste zaken is die het ICC behandeld is het logisch dat er veel aandacht besteed wordt aan de vorderingen van de zaak in de briefings die volgen.

Daarnaast zijn er vier onafhankelijke pieken te zien in het gebruik van lobbytactieken. De eerste hiervan is de 5^{e} briefing van 26 oktober 2005 (zie appendix C). Vervolgens is er een piek bij de 13^{e} briefing van 14 juni 2008. De derde piek is te zien bij de 15^{e} briefing van 7 april 2009. De laatste van deze pieken is te zien bij de 16^{e} briefing die op 26 mei 2009 plaatsvond. Deze pieken zijn te verklaren door de gebeurtenissen die voor de briefings plaats hebben gevonden.

Tabel 1: *overzicht gebruikte lobbymethoden(n)*

briefing	datum	Gebruikte methode (n)				
		Information	Symbolic	Leverage	Accountability	Totaal
4	8-6-2005	7			2	9
5	26-10-2005	15			3	18
6	23-3-2006	7			2	9
7	29-6-2006	5			2	7
8	26-10-2006	5			4	9
9	29-3-2007	2	1		4	7
10	26-6-2007	8	1		2	11
11	10-10-2007	4			5	9
12	18-3-2008	4			1	5
13	24-6-2008	5			5	10
14	8-10-2008	4			0	4
15	7-4-2009	4			3	7
16	26-5-2009	8			1	9
17	4-11 2009	2			0	2
18	26-4-2010	4			0	4
19	3-11-2010	0			0	0
20	8-4-2011	0			0	0
21	8-11-2011	0			0	0
22	19-9-2012	1			1	2
totaal		85	2	0	35	122

In de 5e briefing van 26 oktober 2005 is er de grootste piek te zien. In deze briefing worden de lidstaten van het Hof ingelicht over de uitvaardiging van de 5 arrestatiebevelen tegen leden van het LRA. Dit is een mogelijke verklaring voor het feit dat de aanklager in deze briefing bovengemiddeld veel gebruik heeft gemaakt van lobbytactieken.

In de 15e briefing verwijst de aanklager naar twee gebeurtenissen (zie appendix M). Zo begint het pleidooi met een verwijzing naar de Rwanda genocide. Het is die dag namelijk de dag van *Remembrance of the Rwanda Genocide.* De tweede verwijzing is naar het feit dat het 5 jaar geleden is dat de zaak doorverwezen is naar het Hof door de president van Oeganda. Er was op het moment van de briefing echter nog steeds geen vooruitgang geboekt op het gebied van de uitlevering van de verdachten. Deze twee gebeurtenissen hebben de aanklager een reden gegeven om meer licht op de casus van Oeganda te werpen en de staten nogmaals te herinneren aan hun verplichtingen naar het Hof toe.

Eenzelfde verklaring kan gegeven worden voor het bovengemiddelde gebruik van lobbytactieken in de 16e briefing (zie appendix N). De aanklager verwijst in deze briefing naar het feit dat het bijna vier jaar geleden is dat de arrestatiebevelen voor de misdaden van het LRA zijn uitgevaardigd door het ICC. Er wordt in de briefings dus specifiek verwezen naar gebeurtenissen. Deze gebeurtenissen

kunnen dan ook gezien worden als de verklaring voor het bovengemiddelde gebruik van lobbymethoden door de aanklager in deze briefings.

Kijkend naar het geheel van de briefings is te zien dat er tot en met de 16e briefing van 26 mei 2009 regelmatig over de situatie in Oeganda of over het uitleveren van verdachten werd gesproken. Daar werden voornamelijk *information* en *accountability politics* voor gebruikt. Na deze briefing neemt dit echter af. In de 19e, 20e en 21e diplomatieke briefing van achtereenvolgend 3 november 2010, 8 april 2011 en 8 november 2011 werd er zelfs helemaal geen aandacht meer besteed aan de situatie of vorderingen in Oeganda of het uitleveren van verdachten in het algemeen (zie appendix Q, R, S). In de 22e briefing van 19 september 2012 werd er weer, echter minimaal, aandacht besteed aan deze onderwerpen (zie appendix T). De hernieuwde aandacht in deze laatste briefing is mogelijk te verklaren door het feit dat er tussen de 21e en de 22e briefing veel media aandacht is geweest voor het geweld dat veroorzaakt werd de LRA. De campagne Stop Kony 2012, en in het bijzonder de documentaire dat de organisatie van 'Kony 2012' op YouTube zette, zorgde voor veel aandacht. Hoewel er in de laatste briefing van 19 september 2012 niet gesproken wordt over het mediaoffensief van de campagne kan er toch aangenomen worden dat deze invloed heeft gehad aangezien er weer hernieuwde aandacht is voor de casus. Het feit dat er voor de campagne al drie toespraken niets gezegd is over deze specifieke zaak en er na de campagne weer hernieuwde interesse in is, levert bewijs voor deze invloed.

Na deze eerste analyse van het gebruik van lobbytactieken en de patronen die te zien zijn door de tijd kan er geconcludeerd worden dat specifieke gebeurtenissen invloed hebben gehad op het gebruik van lobbytactieken. Het bovengemiddelde gebruik van lobbytactieken kan in de meeste gevallen verklaard worden door specifieke gebeurtenissen of momenten waarnaar verwezen werd door de aanklager. Voorbeelden hiervan zijn de hernieuwde media aandacht voor zaak door de 'Kony 2012' campagne en het moment waarop het 4 jaar geleden was dat de arrestatiebevelen voor de leden van het LRA uitgevaardigd werden. Deze geven de aanklager een aanleiding om de staten te herinneren aan de situatie in Oeganda en hun verplichtingen tegenover het ICC om de arrestatie en uitlevering van de verdachten te bevorderen. Het grote effect van deze gebeurtenissen en moment op de lobbytactieken van de aanklager waren van tevoren niet verwacht. Wat wel overeenkomt met de verwachting is het feit dat de aanklager voornamelijk gebruik heeft gemaakt van *information politics* en *accountability politics.*

De resultaten van de analyse zullen nu besproken worden per mogelijke tactiek van lobbyen die de hoofdaanklager heeft gebruikt. De resultaten voor *information politics* zullen eerst worden besproken omdat deze tactiek de basis vormt voor de andere tactieken. Alle andere tactieken maken

gebruik van een vorm van informatie om het gedrag van anderen te beïnvloeden. Na de resultaten voor *information politics* zullen de resultaten voor *symbolic politics* en *leverage politics* besproken worden. De analyse wordt afgesloten met een bespreking van het gebruik van a*ccountability politics* door de hoofdaanklager.

Information politics

Deze lobbytactiek is van de vier tactieken het meest gebruikt in de *diplomatic briefings* door de hoofdaanklager van het ICC. Delen van de tekst zijn als *information politics* gecodeerd wanneer er hoofdzakelijk gebruik werd gemaakt van feiten en getuigenissen (zie appendix A). Deze feiten werden op een dusdanige manier aangeboden in de briefings dat deze de vraag voor meer internationale druk om de verdachten te arresteren en uit te leveren ondersteunen. De staten worden door de tactiek overtuigd om meer te doen om ervoor te zorgen dat de verdachten gearresteerd en aan het ICC uitgeleverd worden.

In totaal is er binnen de 18 onderzochte briefings 85 keer gebruik gemaakt van deze methode (zie tabel 1). Gemiddeld werd er 4,7 keer gebruik gemaakt van *information politics* binnen de briefings om de staten te overtuigen te handelen. Wanneer er gekeken wordt naar de briefings waarin er meer dan gemiddeld gebruik werd gemaakt van *information politics,* dan is te zien dat een groot deel hiervan geconcentreerd is in de eerste briefings, de 4^{e} briefing tot en met de 8^{e} briefing. Dit is te verklaren door het feit dat er in deze periode veel nieuwe ontwikkelingen waren. Deze nieuwe informatie kon de aanklager gebruiken om de staten ervan te overtuigen dat het belangrijk is dat de verdachten gearresteerd en uitgeleverd worden.

In deze eerste briefings is er veel informatie gegeven over de vooruitgang in de zaak. Daarnaast is er toegelicht waar de zaak precies op is gebaseerd en is er informatie gegeven over de vijf verdachten. Door deze informatie te geven wordt duidelijk gemaakt waarom het van belang is dat de verdachten gearresteerd worden. Zo zei de aanklager in de 5e briefing: '*The six attacks that are the focus of our investigation are some of the gravest attacks on civilians that the LRA has carried out in Northern Uganda since July 2002. The attacks were carried out in several different regions of Uganda.'* (International Criminal Court 2005, p.6). Dit is een representatief voorbeeld van het gebruik van *information politics* door de aanklager. Hij geeft informatie over de misdaden die gepleegd zijn door de LRA. Er wordt duidelijk gemaakt hoe ernstig deze misdaden waren (zie appendix C). Indirect wordt hiermee gesteld dat het belangrijk is dat de verdachten gearresteerd worden en uitgeleverd aan het

ICC zodat ze berecht kunnen worden. Dit voorbeeld laat zien dat door het geven van dit soort feiten het belang van de arrestatie en uitlevering ondersteund wordt.

Naast het bovengemiddelde gebruik van *information politics* in de eerste briefings is er ook veel gebruik gemaakt van deze methode in de 10e en 16e briefings van de hoofdaanklager. In de 10e briefing van 26 juni 2007 is er naast een overzicht over de huidige stand van zaken in Oeganda ook gesproken over samenwerking tussen staten (zie appendix H). Een voorbeeld van de informatie die de aanklager geeft over de huidige stand van zaken is het volgende citaat: *'On 8 July 2005 the Pre-Trial Chamber issued the warrants of arrest for crimes against humanity, including enslavement, sexual slavery, rape and murder, and war crimes.'(*International Criminal Court 2007, p.7). Door de aanklacht nogmaals expliciet te noemen wordt er nadruk gelegd op het feit dat de verdachten nog steeds niet gearresteerd en uitgeleverd zijn. Dit is een voorbeeld van hoe informatie de lidstaten van het ICC kan oproepen om meer aandacht te besteden aan het conflict.

Na een periode waarin er iets minder aandacht werd besteed aan het conflict in Oeganda wordt er in de 16e briefing weer volop gebruik gemaakt van *information politics* (zie appendix M). Dit is te verklaren aan de hand van het eerder genoemde feit dat het op dat moment bijna vier jaar geleden was dat de arrestatiebevelen uitgegeven waren. Door middel van statistieken over het aantal ontheemde dat veroorzaakt is door het LRA wordt er duidelijk gemaakt hoe erg de situatie is in Oeganda. Zo zei de aanklager in deze briefing: '*LRA killings and abductions continue under Kony's leadership, with more than 100,000 now displaced by LRA activity in DRC, and over 50,000 in Southern Sudan, including over 18,000 displaced across the border from DRC, according to UN OCHA estimates.'*(International Criminal Court 2009, p.3). Door deze gegevens te delen wordt geprobeerd het handelen van de staten te veranderen in de hoop de arrestatie en uitlevering van verdachten te versnellen.

Op basis van de analyse kan geconcludeerd worden dat information politics door de hoofdaanklager van het ICC het meest gebruikt is van alle vier de lobbytactieken. De tactiek is vooral gebruikt om de lidstaten van het ICC te laten inzien hoe ernstig de situatie is in Oeganda en hoe lang het al geleden is dat de arrestatiebevelen uitgegeven werden. Door dit te benadrukken wordt geprobeerd de lidstaten van het ICC duidelijk te maken dat er meer nodig is dan alleen het arrestatiebevel. Hun hulp is nodig bij de arrestatie van de verdachten en de uitlevering van deze verdachten aan het ICC. Het veelvuldig gebruik van deze tactiek komt overeen met de verwachting die voor het onderzoek opgesteld werd dat information politics en accountability politics het meest gebruik zouden worden door de aanklager. Dit is te verklaren aan de hand van de aard van het ICC. Omdat er hier sprake is van een gerechtshof kan er worden aangenomen dat er daarom meer waarde wordt gehecht aan feiten. Dit is

terug te zien in het veelvuldig gebruik van feiten om de vraag naar meer druk vanuit de staten om de arrestatie en uitlevering te bevorderen te ondersteunen.

Symbolic politics

De tweede methode die besproken zal worden is s*ymbolic politic.* Delen van de briefing worden geïnterpreteerd als *symbolic politics* wanneer specifieke gebeurtenissen als symbool gebruikt worden om de gebeurtenis meer waarde te geven. Daarnaast kunnen er meerdere gebeurtenissen aan elkaar gekoppeld met als doel deze meer waarde geven. De symbolische gebeurtenissen worden geïnterpreteerd aangeboden. Hierdoor kan een er meer waarde worden gegeven aan bepaalde gebeurtenissen. Door deze belangrijke gebeurtenissen te noemen kunnen de lidstaten van het ICC beïnvloedt worden om meer aandacht te geven aan het conflict in Oeganda en de arrestatie en uitlevering van de verdachten te stimuleren.

Slechts bij twee verschillende briefings is er bewijs gevonden voor het gebruik van deze methode om de lidstaten van het ICC te beïnvloeden. Zoals in tabel 1 te zien is, is er alleen in 9e briefing van 29 maart 2007 en de 10e briefing van 26 juni 2007 gebruik gemaakt van *symbolic* politics (zie appendix G en G). Een mogelijke verklaring voor het spaarzame gebruik van deze methode is het feit dat het een aanklager is die de toespraken geeft. Het gebruik van symbolische gebeurtenissen is in een rechtszaak niet gebruikelijk. Hij zou dan ook meer waarde kunnen hechten aan feiten en afspraken, iets wat hij vaker gebruikt, dan aan symboliek.

Wanneer er gekeken wordt naar de briefings waarin er wel gebruik is gemaakt van *symbolic politics* dan is er te zien dat er in de 9e briefing weinig gebruik is gemaakt van lobbytactieken in het algemeen. In de 10e briefing is dit in tegenstelling tot de 9e briefing wel het geval. In de negende briefing werd het arresteren van de verdachten gekoppeld aan de geloofwaardigheid van het Hof. De aanklager van het ICC, Luis Moreno-Ocampo zei: *'Securing the arrest of the remaining four LRA commanders is on all counts a priority. Enforcing the decision of the Court on their arrest is important; it is important for the victims in Uganda and Southern Sudan, it is important for the credibility of the Court and its deterrent impact and it is important for the establishment of a legal framework worldwide.'*(International Criminal Court 2007, p.5). Hiermee geeft hij de arrestatie van meer waarde dan alleen arrestatie op zich. De arrestatie van de vier verdachten wordt door de aanklager onder andere gekoppeld aan de geloofwaardigheid van het hof en de oprichting van een wereldwijd juridisch kader. In de 10e briefing wordt deze boodschap exact herhaald. Ook hier wordt dus de

koppeling gemaakt tussen de geloofwaardigheid van het Hof en de arrestatie van de verdachten. Daarnaast wordt ook hier verwezen naar het belang voor de slachtoffers.

Geconcludeerd kan worden dat de aanklager slechts minimaal gebruik heeft gemaakt van *symbolic politics*. De twee keer dat dit wel werd gedaan is er een koppeling gemaakt tussen de arrestatie van de verdachten en onder andere de geloofwaardigheid van het Hof. Het minimale gebruik van deze tactiek kan verklaard worden aan de hand van de aard van het ICC. Omdat het een gerechtshof betreft wordt er minder waarde gehecht aan symboliek en zijn feiten belangrijker. Dit komt overeen met de verwachtingen die aanvankelijk gesteld waren. Deze hielden in dat de aard van het ICC invloed zou hebben op de keuze van de aanklager voor bepaalde lobbytactieken.

Leverage politics

Delen van de briefings zijn geïnterpreteerd als *leverage politics* wanneer er een koppeling wordt gemaakt tussen een verandering van het gedrag van de lidstaten van het ICC en een beloning. In dit geval zou deze verandering zich richten op het meer stimuleren van arrestatie en uitlevering van de verdachten aan het ICC door de lidstaten. In ruil voor deze verandering kan zowel een materiële als een morele beloning worden beloofd. Van tevoren werd er niet verwacht bewijs te vinden voor een materiële beloning vanuit het ICC wanneer staten hun gedrag zouden aanpassen. Het ICC is als organisatie verantwoordelijk voor het onderzoek naar misdaden en het vervolgen van verdachten. Voor het uitvoeren van arrestatiebevelen is het afhankelijk van staten. Daarnaast is het Hof afhankelijk van onder andere haar lidstaten voor financiële steun. Het heeft daarom simpelweg niet de financiële mogelijkheden om een materiële beloning tegenover een verandering van het gedrag van de lidstaten te zetten. In de briefings is zoals verwacht geen bewijs gevonden voor het gebruik van *material leverage politics*.

In de briefings is ook geen bewijs gevonden voor het gebruik van *moral leverage politics.* Ook hier kan de aard van het ICC kunnen verklaren waarom er geen gebruik is gemaakt van deze tactiek. Het ICC heeft alleen de mogelijkheid om de betrokkenheid van de lidstaten van het ICC te stimuleren. Het ICC is geheel afhankelijk van deze lidstaten voor de uitvoering van de uitspraken. Het Hof is dan ook niet in de positie om een morele beloning te beloven, zoals een betere internationale reputatie.

Accountability politics

De laatste lobbymethode die besproken wordt is a*ccountability politics*. Delen van de briefings zijn geïnterpreteerd als *accountability politics* wanneer staten tot verantwoording zijn geroepen of gewezen op eerder aangegane afspraken. Ook wanneer staten gewezen worden op een verschil tussen formeel onderschreven normen, zoals rechtspraak, en hun eigen handelen dan zal dit als accountability politics geïnterpreteerd worden.

In totaal is er in de 18 geanalyseerde briefings 35 keer gebruik gemaakt van deze methode door de hoofdaanklager van het ICC. In tabel 1 is te zien dat dit voornamelijk in de begin periode van de briefings het geval was. Gemiddeld wordt er 1,9 keer per briefing deze lobbymethode toegepast. In briefings 4 tot en met 11 wordt er meer dan gemiddeld gebruik van gemaakt. Daarnaast zijn er nog twee momenten, briefings 13 en 15, waar dit het geval is. Slechts twee keer in alle briefings die geanalyseerd zijn is er meer gebruik gemaakt van *accountability politics* dan van *information politics*. Dit is het geval in briefings negen en elf.

Voornamelijk in de beginperiode zijn de staten gewezen op hun verplichtingen tegenover het Hof en de bevolking van Oeganda. Dit is te verklaren aan de hand van het feit dat voor de 5^{e} briefing op 26 oktober 2005 besloten is om een arrestatiebevel uit te vaardigen voor 5 leden van het LRA (zie appendix C). In de 5^{e} briefing werd deze beslissing dan ook uitgelegd aan de leden van het ICC. Vervolgens is er door middel van *accountability politics* geprobeerd om meer steun te krijgen van de lidstaten van het ICC. Door deze steun zouden de arrestatiebevelen sneller uitgevoerd kunnen worden. Een representatief voorbeeld van het gebruik van *accountability politics* in deze eerste briefings is deze uitspraak van de aanklager in de 5^{e} briefing: *'The next step is arrest. Arrest warrants of the ICC will help galvanize international efforts to apprehend the four suspects. The responsibility to execute the arrests is the responsibility of States Parties and the international community.'*(International Criminal Court 2005, p.7). De lidstaten (States Parties) worden door de aanklager gewezen op hun verantwoordelijkheid om de arrestatiebevelen uit te voeren.

Na de 16^{e} briefing op 26 mei 2009 is er nog maar zeer zelden gebruik gemaakt van de lobbymethode. Dit kan verklaard worden door het feit dat er op dat moment geen veranderingen meer plaatsvonden in de zaak. De verdachten waren nog steeds niet gearresteerd en uitgeleverd.

Er zijn naast de eerste briefings nog twee briefings waarin er meer dan gemiddeld gebruik werd gemaakt van *accountability politics* om het gedrag van de lidstaten van het ICC te beïnvloeden. Na een briefing waarin nauwelijks gebruik was gemaakt van de methode, is er in de 13^{e} politieke briefing van het ICC die plaatsvond op 24 juni 2008 vijf keer gebruik gemaakt van de *accountability methode*

(zie appendix K). Een voorbeeld van het gebruik van deze methode in deze briefing is deze uitspraak van de aanklager: *'As I said earlier, the Court has now issued 12 warrants of arrest. States have only arrested four of these persons. Of the remainder, four warrants have been outstanding since 2005, one since 2006 and two others for over a year. The Court does not have the power to arrest these persons. That role belongs to States.'*(International Criminal Court 2008, p4). Hieruit blijkt duidelijk dat de aanklager de staten wijst op hun verantwoordelijkheid. Het hernieuwde gebruik van deze methode in de 13e briefing is mogelijk te verklaren door het feit dat er tussen de twee toespraken meer ontvoeringen zijn gepleegd in 3 verschillende staten door het LRA. Dit geeft de aanklager een reden om opnieuw druk uit te oefenen op de lidstaten om hun verantwoordelijkheid te nemen.

In de 13e briefing werd er even vaak gebruik gemaakt van *Accountability politics* als van *information politics.* De aanklager van het ICC gaf aanvankelijk vooral informatie over de veranderingen in de situatie in Oeganda sinds de vorige politieke briefing. In zijn slotpleidooi riep hij de staten echter op om hun verantwoordelijkheid te nemen voor het arresteren van de verdachten. Om dit te bereiken gebruikte hij *accountability politics*. De hoofdaanklager zei onder andere: *'It is time for States to transform their expression of support to the idea of international justice into concrete cooperation. Impunity is not an abstract notion. Impunity fuels violence. Continuation of violence and crimes is what happens in situation, like that of Joseph Kony and other LRA leaders, where States Parties of the ICC are not facing their responsibilities, and still continue to refuse to call publicly for arrests'*. (International Criminal Court 2008, p.10). Hier refereert hij duidelijk naar de verantwoordelijkheid van de staten om publiekelijk de druk op te voeren op Oeganda om de verdachten te arresteren waarna ze uitgeleverd kunnen worden aan het ICC.

Ook in de 15e diplomatieke briefing van het ICC gebruikt de aanklager van het Hof na een periode van relatieve stilte veel gebruik van a*ccountability politics* (zie appendix M). In dit geval is dat te verklaren door het feit dat het 5 jaar geleden was dat de zaak door de president van Oeganda doorverwezen werd naar het ICC. Dit geeft de aanklager een directe aanleiding om de staten er nogmaals op te wijzen dat de verdachten nog niet gearresteerd zijn en dat zij verantwoordelijk zijn voor die taak. Dit deed hij onder andere door hen te wijzen op hun verantwoordelijkheid omdat ze het Rome Statuut hebben geratificeerd: *' It is a solemn reminder of the responsibility of States Parties to the Rome Statute. It is a call for action to arrest Bosco Ntaganda, Joseph Kony, Ahmed Harun and Omar Al-Bashir, as well as to stop the massive crimes that they are still committing.'*(International Criminal Court 2009, p.5). Hieruit blijkt duidelijk dat de hoofdaanklager de staten wijst op de verplichtingen die zij zijn aangegaan door zich aan te sluiten bij het ICC.

Conclusie

In dit onderzoek stonden de lobbytactieken die de hoofdaanklager van het ICC heeft gebruikt centraal. Onderzoek naar het werk van de hoofdaanklager voor het proces is tot nu toe schaars geweest. Onderzoeken naar het ICC hebben zich voornamelijk gericht op de oprichting van het Hof of de processen die tot nu toe plaats hebben gevonden. Het is echter aannemelijk dat, voordat het proces kan beginnen, de hoofdaanklager invloed probeert uit te oefenen op de staten om arrestatie en uitlevering van verdachten te bespoedigen. Dit deel van het werk van de hoofdaanklager is door dit onderzoek onderzocht. Daarnaast is er geen onderzoek gedaan naar de invloed van de aard van de actor op de gebruikte lobbytactieken. In dit onderzoek is er onderzocht waarom de aanklager van het International Criminal Court bepaalde lobbymethoden heeft gebruikt.

Dit is onderzocht door middel van een inhoudsanalyse van *diplomatic briefings die* ongeveer twee keer per jaar plaatsvinden. In totaal zijn er 18 briefings geanalyseerd die van 8 juni 2005 tot 19 september 2012 zijn gehouden. Bij de inhoudsanalyse van de briefings is sprake van interpretatie van de tekst. De interpretatie van de tekst is mogelijk anders wanneer dit door anderen verricht wordt. Een vervolgonderzoek waarin de betrouwbaarheid van het coderen kan worden verbeterd is dan ook wenselijk.

Om de hoofdvraag te kunnen beantwoorden is er eerst gekeken naar het geheel van de gebruikte lobbytactieken. Hier bleek dat de hoofdaanklager in de briefings vooral gebruik heeft gemaakt van *information politics* en *accountability politics.* Daarnaast bleek dat er een verband is tussen gebeurtenissen voor de briefings en de mate waarin de aanklager gebruik heeft gemaakt van lobbytactieken. Zo bleek er bijvoorbeeld dat het moment wanneer het 5 jaar geleden was dat de zaak doorverwezen werd naar het ICC en het moment wanneer het 4 jaar geleden was dat de arrestatiebevelen waren uitgevaardigd een positief effect hadden op de mate waarin de aanklager gebruik heeft gemaakt van lobbytactieken. Er was een toename te zien in het aantal gebruikte lobbymethoden. Daarnaast heeft de internationale beweging ‘Stop Kony 2012’ er mogelijk voor heeft gezorgd dat er, na drie briefings zonder verwijzingen naar Oeganda, weer aandacht werd besteed aan de zaak in de 22^{e} briefing. Er kan worden geconcludeerd dat deze gebeurtenissen de aanklager van het ICC aanleiding geven om meer aandacht te besteden in zijn briefings aan de zaak Oeganda en om de lidstaten van het ICC te stimuleren dit ook te doen. Er was van tevoren niet verwacht een verklaring te vinden voor de schommelingen van het aantal lobbytactieken. Er is dan ook sprake van een extra bevinding.

De aanklager heeft hoofdzakelijk gebruik gemaakt van *information* en *accountability politics*. De andere twee methoden, *symbolic* en *leverage politics*, zijn niet of slechts enkele keren gebruikt. Dit is te verklaren aan de hand van de aard van het ICC. De keuze voor tactieken is afhankelijk van de aard van degene die lobbyt. Het ICC is een gerechtshof en daarom kan er aangenomen worden dat er meer waarde wordt gehecht aan feiten en verdragen. Dit leidt tot een voorkeur voor het gebruik van *information* en *accountability politics*. *Symbolic politics* stelt gebeurtenissen centraal en geeft deze meer waarde om zo anderen te beïnvloeden. Deze methode is amper gebruikt door de hoofdaanklager, omdat deze gebruik maakt van symboliek waar het Hof mogelijk minder waarde aan hecht. *Leverage politics* is niet gebruikt in de briefings. Dit is te verklaren door het feit dat het ICC afhankelijk is van de lidstaten om hun rechtspraak uit te voeren. Zelf heeft het Hof geen middelen om de verdachten te arresteren. Het Hof heeft echter ook geen middelen om als beloning tegenover een gedragsverandering te zetten. Het ICC is een onafhankelijk gerechtshof en het ligt dan ook niet in de aard van het Hof om staten een betere internationale reputatie te beloven. Het gebruik van *information politics en accountability politics* is te verklaren vanuit de mogelijkheden en voorkeuren die het Hof heeft om de lidstaten te beïnvloeden. De middelen die het ICC voorhanden heeft zijn feiten en verdragen, waaraan de staten zich dienen te houden.

Dit onderzoek heeft uitgewezen dat het ICC wel degelijk gebruik maakt van lobbymethoden om uitlevering van verdachten te bespoedigen. Hoewel het ICC een onafhankelijk international gerechtshof is en aan haar neutraliteit niet getwijfeld wordt, is er in de momenten voor het daadwerkelijke proces gebruik gemaakt van lobbymethoden. Daarnaast kan er geconcludeerd worden dat het gebruik hiervan beïnvloed wordt door zowel de aard van de actor die de tactieken gebruikt als door specifieke gebeurtenissen.

Meer onderzoek is wenselijk, omdat er tot nu toe weinig wetenschappelijk onderzoek gedaan is naar de invloed van deze twee zaken op de gebruikte lobbytactieken. Het is dan ook wenselijk dat er onderzocht wordt of deze zaken ook invloed hebben op andere actoren, bijvoorbeeld op de lobby van internationale organisaties. Daarnaast kan er onderzocht worden of een lobby van bijvoorbeeld het Joegoslavië tribunaal ook beïnvloed wordt door de aard van deze actor. Wat betreft de invloed van specifieke gebeurtenissen op het gebruik van lobbytactieken dient er verder onderzoek gedaan te worden naar in hoeverre de media invloed hierop heeft. De lobbytactieken van het ICC zelf dienen ook verder onderzocht te worden. Zo dient de effectiviteit van de lobby van de aanklager onderzocht te worden en kan er gekeken worden of het ICC ook op andere manieren lobbyt die minder zichtbaar zijn.

De bevinding van dit onderzoek, dat de aard van de actor invloed heeft op de lobbytactieken die deze gebruikt, heeft niet alleen implicaties voor deze casus. Er dient dan ook onderzocht te worden of hier alleen sprake van is bij gerechtshoven zoals het ICC of dat dit voor alle verschillende actoren geldt. Mocht dit gelden voor alle verschillende actoren dan verklaard dit een groot deel van de verschillen in de lobbytactieken die gebruikt worden.

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Appendix

Appendix A: Codeerboek

Information politics

Er wordt verwezen naar:

- Feiten
- Gebeurtenissen
- Getuigenissen

Symbolic politics

Er wordt verwezen naar:

- Symbolische gebeurtenissen
- Koppeling tussen gebeurtenissen
- Koppeling tussen gebeurtenissen en (mogelijke uitkomsten)

Leverage politics

Er wordt verwezen naar:

- Verband tussen een verandering van gedrag en materiële beloning (bijv. geld)
- Verband tussen een verandering van gedrag en morele beloning (bijv. reputatie)

Accountability politics

Er wordt verwezen naar:

- Eerder gemaakte afspraken
- Verdragen
- Verantwoordelijkheid
- Eerder gemaakte taakverdeling

Appendix B: 4th diplomatic briefing

Cour
Pénale
Internationale

International
Criminal
Court

SPEECH BY SERGE BRAMMERTZ,

DEPUTY PROSECUTOR

Information session for diplomatic representations

Brussels, 8 June 2005

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 investigative 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 situation 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.

* *

Appendix C: 5th diplomatic briefing

Fifth Diplomatic Briefing of the International Criminal Court

Compilation of Statements

The Hague, 26 October 2005

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Luis Moreno-Ocampo, Prosecutor

Thank you Mr. President. Excellencies, ladies and gentlemen, as requested, I have the honour to provide further information on our activities in our three investigations.

Uganda

I would like to start with a comparatively detailed explanation of the Uganda investigation, in light of the issuance of arrest warrants.

On 28 July 2004, after the preliminary analysis required by the Statute, I took the decision to open an investigation.

The criteria for selection of the first case was gravity. We analyzed the gravity of all crimes in Northern Uganda committed by all groups - the LRA, the UPDF, and other forces. Crimes committed by the LRA were dramatically more numerous and of much higher gravity than alleged crimes by other groups. We therefore started with an investigation of the LRA.

During the investigation, we also continued to collect information on other groups. We collected documents and carried out interviews of several sources. We will continue to collect information on allegations concerning all other groups, to determine whether the Statute thresholds are met and the policy of focusing on the persons most responsible is satisfied.

The investigation was carried out by a multinational investigation team, supported by the entire Office and the Registry. The team works in a highly challenging environment, investigating massive crimes during an ongoing conflict.

Operating in small groups of two or three, we made more than fifty missions to Uganda. The main part of the investigation was over in nine months. We took a number of measures to protect the security of potential witnesses, the victims, and our investigators.

On 6 May 2005, we filed an application to Pre-Trial Chamber II for warrants of arrest for five of the most senior commanders in the LRA, including its leader Joseph Kony. We

requested that the application and the warrants be sealed, primarily because of security considerations.

The Pre-Trial Chamber issued the five arrest warrants on 8 July 2005. Since then, we have been making preparations for security and unsealing. The Government of Uganda has the main responsibility for security on the ground. Together with the Victims and Witnesses Unit of the Registry, we prepared protective measures for victims and potential witnesses. In light of these measures, the Pre-Trial Chamber took the decision to unseal the warrants on 13 October 2005.

The six attacks that are the focus of our investigation are some of the gravest attacks on civilians that the LRA has carried out in Northern Uganda since July 2002. The attacks were carried out in several different regions of Uganda.

The warrants are against five leaders of the LRA on counts of crimes against humanity and war crimes. The alleged crimes include rape, murder, enslavement, sexual enslavement, and forced enlisting of children.

Joseph Kony is the absolute leader of the LRA and controls life and death within the organization. We collected evidence showing how he personally manages the criminal campaign of the LRA. Vincent Otti is second in command, and has personally led attacks on civilians in Uganda. Raska Lukwiya is Army Commander of the LRA and is responsible for some of the worst attacks committed by the LRA during the investigated period.

Dominic Ongwen was an LRA Brigade Commander, commanding the most violent of the four brigades of the LRA In the last weeks, it was reported that Ongwen was killed in combat, following an attack on an IDP camp.

In all our work, we are guided by the interests of the victims and we will always be respectful of local traditions. My team made over twenty missions to Uganda to listen to the concerns of local community leaders, including religious and traditional leaders, local government officials, Members of Parliament, and local and international NGOs.

I also held meetings here in The Hague with leaders of the Lango, Acholi, Teso, and Madi communities. We agreed to working together as part of a common effort to achieve

justice and reconciliation, the rebuilding of communities, and to end violence in Northern Uganda.

Our involvement brings a justice component to a comprehensive strategy. These efforts can reinforce each other. For example, we have already received reliable reports of LRA members demobilizing in reaction to the warrants. To them it was a signal that the international community is now taking the situation seriously and that it is no longer a local issue. In order to deter defections, LRA leaders have been claiming that the ICC will pursue more warrants against all fighters. It is important to get out the message that we are focusing only on the persons most responsible. The justice component work may help isolate the top leaders, contributing to security and an end to violence.

The next step is arrest. Arrest warrants of the ICC will help galvanize international efforts to apprehend the four suspects. The responsibility to execute the arrests is the responsibility of States Parties and the international community. Reports indicate that the fugitives are moving between three countries: Uganda, DRC, and the Sudan. These countries must work together, with the support of the international community, to carry out the arrests.

Democratic Republic of the Congo

In the DRC situation, given the scale of the crimes and the number of armed groups, we must work sequentially. We are starting with one or two cases, selected based on gravity, while continuing to develop other cases. We identified the Ituri region as the area with the gravest crimes within our temporal jurisdiction. We then identified and prioritized the groups most responsible for crimes.

We have continued to carry out missions. With the Registry, we have established a field office in Kinshasa. We also have an operational presence in Bunia.

We have interviewed witnesses, insiders, and suspects, have and collected documents and materials with respect to crime base, linkages, and military structures. We continue with the Registry to develop witness protection arrangements.

Transport, security, and logistics remain major challenges. We remain heavily reliant

on MONUC. For example, it is 1700 kilometers from Kinshasa to Bunia, so we must arrange transport with MONUC planes; such arrangements are subject to available space and frequent flight cancellations. In some areas, we do not have secure alternatives to finding accommodation in peacekeeping camps. At times, because of security related concerns and logistical problems – for example, difficulties securing space in camps – we have had to postpone or cancel missions. Despite some organizational and legal problems, support on the ground is generally good. We are striving to become as autonomous as possible in the circumstances, but in some areas, we will not be able to operate without support.

Darfur

With regard to the Darfur investigation, I reported to the Security Council on 29 June 2005, detailing our activities. The report is available on our website.

We recruited our investigation team, including investigators, analysts, and field officers, as well as interpreters in local languages. The team completed its training on issues such as legal aspects of the elements of crimes, investigation strategy, crimes of sexual violence, and local culture and society.

We have secured cooperation of several key sources of evidence, including organizations and individuals. We have collected and analysed documents reports and video and photo records. The team has conducted twelve missions to third countries in order to interview witnesses, including victims. We have also conducted missions to Chad to establish an operational presence there.

We are analyzing national proceedings and admissibility issues.

We have had good interactions with the Government of Sudan, and have had exploratory meetings and received information on national proceedings. Because we are commencing our investigation from outside of the territory, we have not yet issued any requests for cooperation to the Government of Sudan. Unfettered cooperation will be essential for an efficient investigation.

The Security Council encouraged the Court to support efforts to promote rule of law and

human rights, and emphasized the need for reconciliation and efforts to restore long-lasting peace. We will continue to work in a manner mindful of these initiatives, and bring a justice component to a comprehensive strategy. We are also looking forward to cooperation with the AU, as set forth in the Council resolution.

Analysis

In addition to the three investigations, we are conducting analysis of 7 situations of concern. We are planning missions to the Central African Republic and to Cote d'Ivoire to collect additional information on the criteria of Article 53. Our budget assumptions foresee a fourth investigation starting in 2006.

Cooperation

The Court as a whole needs the cooperation of the international community. We are grateful for the strong statements of support from so many actors. In order to carry out our mandate, we need concrete, practical cooperation from all States Parties.

For example, the Office of the Prosecutor needs information in order to carry out efficient and objective investigations. At this time, we have agreements to share sensitive information with only two States Parties. The Office of the Prosecutor and the Registry will frequently need logistical support to carry out operational activities in the field. We may need political support to arrange access to witnesses and evidence. We need any help possible to create conditions for arrest. We need States Parties working within international and regional organisations to create the most supportive environment possible. By acting on this common commitment, we have a unique opportunity to advance the aims of the Rome Statute.

The Registrar, Mr. Bruno Cathala, will now discuss some of the specific challenges we face in these contexts and the ways in which we overcome them.

Appendix D: 6th diplomatic briefing

Cour
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Sixth Diplomatic Briefing of the International Criminal Court
Sixième réunion d'information de la Cour pénale internationale à l'intention du corps diplomatique

Compilation of Statements
Recueil de déclarations

*****Check Against Delivery*****
*****La version prononcée fait foi*****

The Hague, 23 March 2006
La Haye, le 23 mars2006

Luis Moreno-Ocampo, Prosecutor/Le Procureur

I have the honour to speak with you today about external communications for the Office of the Prosecutor. As you know, the Registry has primary responsibility for disseminating general information about the Court, serving the goal of transparency. The OTP supplements this with specific external communications to explain our policies and activities. In this way we seek to build support for our activities, helping us to carry out our mandate.

We have crossed a river. We have opened 3 investigations, and we have almost completed investigations in 2 cases. We have arrest warrants. A prisoner has been transferred. Trials will start this year. A new phase with new challenges is starting.

I would like to communicate to you the main developments in our three situations and then discuss the issues and challenges for our communications and some plans for the future.

ACTIVITIES

Democratic Republic of the Congo

The most important development since the ASP lies in the DRC situation, with the arrest and surrender of Thomas Lubanga Dyilo. The ICC now has its first suspect in custody. The Court is now in a position to commence its first trial this year. Many partners made this possible through their cooperation. We are grateful to the government of France for making available a military aircraft, and to the members of the Security Council sanctions committee for lifting the travel ban.

Thomas Lubanga was the founder and leader of one of the most dangerous militia in Ituri. He has been charged with conscripting and enlisting children under the age of 15 years and using them to participate actively in hostilities. Forcing children to become killers is an extremely serious crime. I have a special duty under Article 54 of the Statute to consider crimes against children.

This is the first case, not the last. The investigation is ongoing, we will continue to investigate more crimes committed by Thomas Lubanga Dyilo and we will also investigate other

crimes committed by other groups in Ituri. This is important, it's a sequence.

Uganda

In Uganda, we are working with the Registry on strengthened outreach activities and efforts to galvanize support for arrests. The issuance of warrants has produced a new dynamic. Uganda, the DRC and the Sudan have pledged to coordinate to carry out arrests and leave the LRA no safe haven. The LRA is scattered into smaller groups in different places and is increasingly isolated. The security situation has improved and must be further solidified.

We are continuing missions to complete the investigation of the first case. We work in sequence and started with the top leaders of the group responsible for the gravest crimes. When this is completed, we will evaluate information on crimes allegedly committed by others persons , including member of the UPDF, to determine whether the gravity and complementarity standards of the Statute are met.

Darfur

Darfur presents new challenges for the Court. The security situation in Darfur means that any national or international investigations in Darfur at this time would cause risks for victims. No one can conduct a judicial investigation in Darfur. A comparative advantage for the ICC is that we can more easily investigate from the outside. We have interviewed witnesses in more than 10 countries. We are planning to present a clear picture of the crimes in our next report to the Security Council, in June.

We have recently conducted two missions to the Sudan, in November last year and in February. We have discussed cooperation and admissibility. We have interviewed persons. The Sudan will be sending us further information that we have requested.

The African Union will be an essential partner for our work. Any assistance of States Parties in advancing that partnership will be appreciated.

Other situations

We have learned in our work that preventative impact can begin even before investigations. We have sent a mission to Central African Republic to seek information on admissibility. There is a pending domestic decision that could affect admissibility. We are also planning a mission to Cote d'Ivoire when security permits, with the support of the UN. The mission could contribute to prevention.

EXTERNAL COMMUNICATIONS OF THE OTP

Our communications help us to achieve our specific goals in at least two ways: building support and cooperation for our work, and contributing to the broader impact of the Court.

As a legal body responsible for carrying out investigations, we have several constraints on our scope to communicate. We must present our evidence before the judges, not the media. Confidentiality and discretion are necessary to help us protect witnesses and ensure the effectiveness of investigations.

Some constraints arise in particular circumstances. Sometimes protecting the interests of victims may require us to take a low profile.

Information may be under seal. As a result, we may at times be unable to share the most important developments or accomplishments. We can only divulge or confirm the information once it has been unsealed in accordance with judicial process.

How do we maximize the sharing of information with the constraints of an Office of the Prosecutor?

- One: We will engage in discussion and dialogue on our general policies and approaches.
- Two: While most investigative activities will be low profile, we regularly engage in dialogue with local and national communities and provide general updates in various reports and forums, such as the Diplomatic Briefings.
- Three: Even during investigation, the level of profile will vary at different moments in the process. Opportunities to galvanize attention will arise at key moments such as initiation of investigation, reports to the Security Council and unsealing of warrants. The level of profile may also vary based on the needs of the investigation. In Darfur, a higher profile investigation may be needed in coming months.

- Four: General outreach in a situation can carry on independently of investigations.
- Five: Trials are the most important moment for an elevated profile. This will increase the impact of the Court, including its preventative and educational effects.

Confidentiality and transparency in analysis

Let me provide some examples. I will start with analysis. In principle, analysis of communications is confidential. The Statute and the Rules emphasize the confidentiality of information, protecting the senders of communications, and protecting the integrity of our processes.

Subject to these rules, we are sharing as much information as we can, given the legitimate external interest. We have published a policy paper on our approach to analysis, we have invited comments, and we will be revising our policy on analysis to provide more details on our approach.

On 10 February we published an important update on communications, providing statistics and information on our analyses. We will be furnishing these updates on a periodic basis.

While responses are sent only to senders of communications, we announced our policy that important responses will be publicized in the interests of transparency. We will make responses public where a situation has been subject to intensive analysis, the fact of analysis is in the public domain and reasons can be given without risks to the senders.

As a result, we published our reasons for decision in the Iraq and Venezuela situations. The reactions have shown that publishing responses can have a positive impact, building understanding of our mandate and our standards.

Respecting interests of victims

Investigations in situations of conflict pose many new issues for OTP communication. I can give you the example of Uganda and the interests of victims.

In Uganda, in our first contacts, many community leaders urged us to take a low profile, so

as not to aggravate security conditions and to avoid affecting efforts to negotiate an end to the conflict. We therefore kept a low profile in the early months of our investigation, showing the compatibility of justice and efforts for peace. This was our duty to respect victims, and it also advanced cooperation for our investigation because it helped us build relations with local communities.

We engaged in extensive dialogue with community leaders. We reached understandings that we are bringing a justice component to a comprehensive approach. Even the mediators of the peace process are now focused on how to work alongside justice and arrest efforts. The result is a better context for cooperation, for arrest, and for succeeding in our mandate. The networks are now used by the Court in its outreach programs. The outreach of the Court has been increasing throughout last year and will continue to increase.

Complex concepts, polarized populations

Sometimes we must deliver messages on complex concepts, which will be particularly difficult in polarized settings where different sides may emphasize different messages.

I can again use the example of Uganda and the discussion on the interests of justice. Our position was sometimes misquoted as meaning that we had stopped investigating to allow the peace process, whereas others portrayed it as meaning that we were indifferent to the peace process.

Our position was that we were carrying out investigation as per our mandate. We also collected information on the interests of justice, as per our duty under the Statute. We noted the *legal possibility* under the Statute of stopping if the stringent requirements under the "interests of justice" were satisfied, although the information never reached that standard. We managed our timing and profile to avoid disrupting other efforts, and investigations continued unabated.

It was through dialogue with local partners and organizations that understanding was reached.

Building cooperation/different constituencies

For my last example of communication challenges, consider the need to build cooperation. Some observers have expressed concerns about contacts with particular governments or entities that they consider inappropriate. This can create misperceptions of our work and thus create an external communication challenge.

Let me be clear. International justice is based on international cooperation. Investigations are not possible without external support, particularly from States. Territorial States are important to enable us to go to the field, to access evidence and to take security measures. Territorial States are uniquely essential for arrest efforts. For effective investigation, it is my duty to seek cooperation from States and other partners who may help.

It will be important for us to make clear that we will seek information and evidence from all sources. The focus of investigation is driven only by the evidence. We will continue to do this with full impartiality.

Next steps

Effective communication is essential for our operations and for our broader impact. In the DRC, we are explaining that the Lubanga warrant was only one step in a sequence, and we are putting the spotlight on the often neglected problem of child soldiers. In Darfur, we will be increasing our profile in the coming months. We need to explain to audiences in the Sudan and in the international community that the investigation is proceeding unabated, in a manner respectful of Sudanese society.

In Uganda, the radio messages announcing the warrants are a good example of public information contributing to the operations. The radio messages appear to have contributed to defections, weakening the LRA. Public information about the warrants is helping to discourage supply and support, leading to a greater likelihood of arrests. Agreements with Uganda, the DRC and the Sudan are increasing the prospects for arrest.

We are preparing an OTP external communication strategy that will supplement and complement the Court-wide external communication strategy.

Periodic strategic meetings with States Parties and with NGOs have been an excellent forum to

communicate about our policies and activities and to obtain feedback to improve them.

The Office is currently developing specific policies on various issues. We look forward to opportunity for dialogue with States Parties and NGOs with respect to those policies. This dialogue is an important component of our external communication. Your understanding of our work will help amplify our messages and increase our impact.

Developing an epistemic network of academics and research institutions will also help to shape our thinking and improve the appreciation of our work . A lack of understanding of our specific constraints on the part of those who would evaluate academically the work of the ICC could undermine the ICC's legitimacy.

Communication is a two-way process. An international Prosecutor is always making choices, and there will always be room for different views. For example, in the Milosevic case, the Prosecutor had a choice between establishing a historical record or bringing very focused charges. Both options were reasonable. The Prosecutor is now criticized for choosing the broader approach. My choice will be the narrower approach. Some day I will be criticized for that approach too. The point is, we understand there will always be other views, we are ready to explain our reasons and discuss views. It does not affect our independence to receive views as part of an appropriate dialogue. As part of the policy development process, I hope we can develop ways to continue and strengthen that dialogue.

It is a very good moment for the Court. A new phase with new challenges is starting. We thank you for your cooperation, but we need to strengthen the efforts further. We need your help to arrest the LRA leaders and stop their activities, we need your help to develop new cases in DRC and to contribute to end crimes and impunity in Darfur.

Thank you.

Appendix E: 7th diplomatic briefing

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Seventh Diplomatic Briefing of the International Criminal Court

Compilation of Statements

*****Check Against Delivery*****

Brussels, 29 June 2006

Luis Moreno-Ocampo, Prosecutor

PROSECUTORIAL STRATEGY

I have the honor to speak with you today about the Prosecutorial Strategy. As President Kirsch just explained, the Court has adopted a common approach to strategic planning which sets out three interrelated strategic goals, and 30 strategic objectives over the coming years to help reach these goals. As you know, the ICC operates under the One-Court principle, while nevertheless respecting the independence of the individual organs. The common sector is contained in the ICC Plan. The Prosecutorial Strategy is independent, but coordinated with the ICC Plan.

Background

The OTP has developed its Prosecutorial Strategy after extensive consultation with the staff and senior management. It is based on the experience gained during the Office's first three years of work. We are producing a report on the activities performed during these three years and we will organize meetings with states and other constituencies in order to receive their comments. We will explain how we face certain dilemmas. The **first dilemma** is how to begin cases and gain the necessary support and cooperation. Welcoming voluntary referrals by territorial states was a crucial policy decision taken by the Office. This method of initiating cases has guaranteed greater cooperation and on-the-ground support.

The **second dilemma** faced by the Office is one shared by other international tribunals: how to conduct criminal investigations without a state apparatus, i.e., without any police forces, armies, or other enforcement capacities. The Court faces the added wrinkle of conducting the bulk of its investigations in the midst of on-going conflicts. Operating in the context of on-going conflicts has raised significant challenges for the protection of victims, witnesses and investigators and has also raised thorny dilemmas related to peace and justice. In response, the Office has adapted its investigatory strategies to the individual conflict situations in which it operates, and has adopted an overarching policy of conducting focused investigations.

The **third dilemma** facing the Office is how to execute arrest warrants. This is perhaps the most critical and difficult issue that the Office has encountered in its first three years. The

Court does not have its own enforcement capacity. Under the Rome Statute, it is the State Parties that bear the responsibility for arresting suspects and delivering them to the Court for prosecution. It is particularly crucial for a new, permanent International Criminal Court to begin creating a record of successful prosecutions early in its tenure. More assistance is needed to enforce the five outstanding arrest warrants that have been issued in the Northern Uganda case. We anticipate that this will be an on-going challenge in the next phase of its operations.

The report will include a summary of the issues we are discussing before the Pre-Trial and Appeals Chambers regarding fundamental legal matters, such as the scope of victim participation; the role of the each organ in the investigative process; and the scope of review of the Appeals Chamber.

The formulation of the Prosecutorial Strategy took into consideration the lessons learned during the past and is crucial to allows us - the OTP, the ICC as a whole and the State Parties – to agree upon a common understanding of what is expected of the Office over the next three years. The success of the Court should not be measured in terms of number of cases. Instead a more appropriate measure would be the impact of the Court in the promotion of national efforts and international cooperation to end impunity for the most serious international crimes. Therefore, it is important that we can agree on a common standard for evaluating the Office's work in the coming years. In this regard, this briefing is not the end of the process. Rather, we intend to discuss the Prosecutorial Strategy with representatives of states in September-October in New York and in the Hague. We will circulate a copy of the three year report and the Prosecutorial Strategy in advance, as well as the policy papers which we are in the process of finalizing and which have helped to shape the Prosecutorial Strategy. We will also distribute annexes to our policy paper, defining the standards we apply to select cases and how we interpret art. 53 of the Statute, specifically on the interests of justice. At the end of this process we will adjust our strategy in accordance with the comments received.

Principles of the Prosecutorial Strategy

At the core of the Prosecutorial Strategy lie three essential principles that the Office has developed during its first three years of work: positive complementarity; focused investigations and prosecutions; and maximizing the impact.

With regard *complementarity*, the Office recognizes that according to the Rome Statute national states have the primary responsibility for preventing and punishing atrocities in their own territories. In this design, intervention by the ICC must be exceptional – it will only step in when states fail to conduct investigations and prosecutions, or where they purport to do so but in reality are unwilling or unable to genuinely carry out proceedings. A Court based on the principle of complementarity ensures the international rule of law by creating an interdependent, mutually reinforcing international system of justice. With this in mind, the Office has adopted a *positive approach* to complementarity, meaning that it encourages genuine national proceedings where possible; relies on national and international networks, and participates in a system of international cooperation. As a consequence, the effectiveness of the Court should not be measured only by the number of cases that reach the Court. On the contrary, the *absence of trials* by the Court, as a consequence of the effective functioning of national systems, would be a major success.

The second principle guiding the Prosecutorial Strategy is that of *focused investigations and prosecutions*. The Office will select situations and cases taking into consideration their gravity in order to work on *the most serious* crimes. Our focus will be on those who bear the *greatest responsibility* for these crimes, according to, and dependent on, the evidence that emerges in the course of an investigation. The policy of focused investigations and prosecutions also means that we select incidents and as few witnesses as possible are called to testify, reducing the security risks and assisting the Court in operating cost efficiently.

The policy of focused investigations and prosecutions is evident in the cases that have been brought so far. In Uganda, the Lord's Resistance Army has had, at a minimum, hundreds of members. According to the evidence collected we concluded that five persons were those bearing the greatest responsibility. In Northern Uganda between July 2002 and June 2004 there were approximately 850 incidents. We chose to focus on just six, representing different regions and criminalities, for example gender crimes and looting. The selection of cases was affected to a greater extent by security problems in the DRC. We are presenting the first case based on the charge of child conscription.

The third principle guiding the Prosecutorial Strategy is to *maximize the impact* of our activities. The mere existence of the Rome Statute has already had a deterrent effect by encouraging states to incorporate the crimes within the jurisdiction of the Court into their domestic law. Even before the initiation of any investigation by the Court itself, the use of this

legislation can be a major step towards preventing atrocities or at least, in bringing to justice the perpetrators of such atrocities. Of course ICC trials and convictions will have an additional deterrent effect. Even before trials have begun, the investigation itself will play a preventative role. The beginning of an investigation increases the risk of punishment and therefore has a deterrent impact. Massive crimes are planned, the announcement of an investigation could have deterrent impact. Interestingly not just in the area of the investigation but also in different countries around the world. We are collecting information about this.

Finally, in establishing and implementing its policies the Office has been and remains cognizant of the important role that *victims* play in the proceedings. At every stage of the judicial process, the Office will consult with the relevant victims and take their interests into account. The Office has also developed procedures to avoid unnecessary risks to witnesses and potential retraumatization.

Objectives for the Coming Three Years

Based on the OTP's essential principles and utilizing its organizational structure, the Office has formulated *five strategic objectives* for the coming three years.

The first objective is to conduct four to six impartial investigations of those who bear the greatest responsibility in its current or new situations.

The second objective is to further improve the quality of the prosecution, aiming to complete two expeditious trials.

The third objective is to gain the necessary forms of cooperation for all situations to allow for effective investigations and to mobilize and facilitate successful arrest operations.

The fourth objective is to continuously improve the way in which the OTP interacts with victims and addresses their interests.

Finally, the fifth objective is to establish forms of cooperation with states and organizations to maximize the OTP's contribution to the fight against impunity and the prevention

of crimes.

On the first OTP objective, we foresee that in the next three years a maximum of six investigations will be needed and that our current resources will be sufficient to carry them out.

With regard to the second OTP objective, the number of trials is difficult to foresee as it is dependant on the arrests and their sequence. The length of the proceedings depends on a number of factors, such as the defense's policy and the security for witnesses. The judges are in charge of the proceedings, however the OTP aims to complete two trials in the coming three years.

I would like to emphasize the third objective of gaining the forms of cooperation necessary to mobilize and facilitate successful arrest operations. While the Court does not have a mandate to "arrest" by itself, the experience gained so far demonstrates that the Office can and should deploy substantial efforts to gathering information on the whereabouts of suspects, galvanizing support and cooperation for arrest and surrender, and promoting coordination among national and international parties potentially involved in a successful arrest.

With regard to the fourth objective of continuously improving the way in which the Office interacts with victims and addresses their interests, the Office has the obligation to assess the interests of victims as part of its determination of the interests of justice under article 53 and rule 48. Furthermore, the Statute provides for a generous scheme of victims participation as a way of ensuring that their views and concerns are taken into account throughout the proceedings. For these reasons and in light of our past experience, it is clear that it is necessary to systematically seek the views of victims and local communities at an early stage, before an investigation is launched, and to continue to assess their interests on an ongoing basis. This systematic interaction will also allow for adequate outreach among local communities in order to enhance the understanding and impact of OTP activities.

Finally, with regard to the fifth objective of establishing forms of cooperation with states and organizations to maximize the OTP's contribution to the fight against impunity and the prevention of crimes, the Office is committed to fostering the type of international cooperation that will encourage and assist states to address impunity for large-scale serious crimes, in a comprehensive fashion.

Conclusion

The Prosecutorial Strategy, based on the Office's experience over the last three years, will assist the Office in achieving its objectives, and thereby enhance the ability of the Court to reach its overall strategic objectives and goals. However, this cannot be accomplished without the assistance of states. The design of the ICC is that the Court assumes responsibility for the legal aspects, while states ensure that the suspects against whom warrants are issued are arrested. We are planning how to do our part better and we need to receive from you indications of how the international community can assist in executing the arrests warrants. Without your contribution to secure arrests we are unable to fulfill our mandate. Together we can strive to achieve the aims of the Rome Statute to prevent impunity for the perpetrators of the most serious crimes of concern to the international community and thereby contribute to the prevention of these crimes.

Thank you.

Appendix F: 8th diplomatic briefing

Cour
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Eighth Diplomatic Briefing of the International Criminal Court

Compilation of Statements

*****Check Against Delivery*****

The Hague, 26 October 2006

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Luis Moreno-Ocampo, Prosecutor

Introduction

Your Excellencies, ladies and gentlemen, it is an honour to address you here today.

As you will recall, at the last diplomatic briefing on 29 June 2006 I spoke about the Prosecutorial Strategy. Specifically I described the Office's five strategic objectives for the next three years :

(1) To complete two expeditious trials improving the quality of the prosecution;

(2) to conduct four to six new investigations of those who bear the greatest responsibility;

(3) to gain the necessary forms of cooperation;

(4) to continuously improve the way in which we interact with victims

(5) to maximize the office's contribution to the fight against impunity and the prevention of crimes.

Today I would like to explain in a bit more detail our present activities regarding the different situations my office is working on and the assumptions for the coming year.

Our current activities

In the Darfur investigation, our efforts are complicated by the security situation within Sudan and, also, within neighbouring countries such as Chad. The OTP has regularly consulted with the relevant agencies of the UN and with the AU and continues to make an assessment of the security situation. We have concluded since June 2005 that it was not possible to adequately protect witnesses in Darfur. No effective system of witness protection can be established. Thus investigative effort are continuing outside Darfur in more secure locations; this has not prevented the investigation from proceeding for a period of fourteen months. During that time the OTP has taken statements from witnesses and victims, including refugees from Darfur. We have conducted investigative steps in fifteen countries. The full collection of evidence gathered since June 2005 includes approximately nine thousand seven hundred fifty items of evidence or information; this includes those documents provided by the UN International Commission of Inquiry.

The OTP also has requested cooperation from the Government of Sudan. Four missions have taken place in Khartoum. Investigative staff from OTP have conducted formal interviews of two senior

officials of the Government of Sudan about the conflict in Darfur. Among the material which has been supplied by the Government of Sudan is information on their own efforts to investigate and prosecute crimes which potentially fall within the jurisdiction of the Court. The OTP continues to monitor this activity by the Government of Sudan in accordance with its obligations under the Statute. In the coming phase the OTP will seek to complete the investigation of the first case and will continue to assess on an ongoing basis the admissibility of cases. The Office aims to deliver justice to the victims of the crimes in Darfur, either through respecting genuine efforts at a national level or through cases before ICC judges or a combination of both.

Concerning Uganda, I would like to update you on issues relating to the arrest warrants and our contacts with relevant authorities of the DRC, Sudan and Uganda. As you know, we regularly communicate with the Ugandan authorities. Since October 2005, the OTP has also conducted four missions to the Sudan during which meetings were conducted about the execution of the warrants of arrest. Since the LRA entered the DRC, the OTP has also conducted missions to the DRC to exchange information. In April 2006, I met with President Joseph Kabila and other government and UN officials about the LRA and the execution of warrants naming LRA commanders located inside the DRC territory. The OTP also has conducted missions, in Europe, Africa, and to New York, to meet with representatives of other concerned States-parties and the relevant departments of the UN, including the Department of Peacekeeping Operations, as a means of supporting international cooperation in aid of arrest efforts.

On 26 August 2006, the Government of Uganda and the LRA signed a Cessation of Hostilities Agreement which conditioned a temporary cease-fire. The role of the existence of the warrants in creating pressure upon the LRA to bring them to the table has publicly been acknowledged.

The States to which the warrants of arrest were transmitted continue to re-state their commitment to executing the warrants of arrest, during the pendency of the ongoing negotiations. Uganda's position that it has engaged in the current peace talks as a means of seeking a permanent solution to the violence that serves the need for peace and justice, compatible with its obligations under the Rome Statute is expressed in the letter of the Government of Uganda to the Registry dated October 2006. The Government of Sudan has signed an *ad hoc* agreement with the OTP in which it agreed to cooperate in arrest efforts. Through its meetings with DRC representatives, the OTP is aware that the Government of the DRC also understands its cooperation obligations and has in acknowledgment of those obligations

requested MONUC to support arrest efforts consistent with MONUC's mandate.

The peace negotiations have given rise to media accounts in which commentators or representatives of States are reported to have raised the possibility of "withdrawing" the warrants of arrest or granting an amnesty to the persons named in the warrants. No State or any other entity, however, has sought withdrawal of the warrants, nor has any State or any other entity requested any amnesty from this Court. The Government of Uganda, as a party to the talks, has also consistently indicated in its communications to the Registry and the OTP that "the talks remain at an early stage and it is speculative to determine the outcome at this moment."

Our mandate is judicial. Neither the OTP nor the ICC are parties to the talks. The main point for us is that the latest letter from the Government of Uganda to the Registry reiterates that the commitment of the Government to cooperate with, and support the Court remains unchanged. Ambassador Blaak also acknowledged the ongoing nature of Uganda's cooperation, in openly seeking recognition from the other States-parties attending the Second Public Hearing of the Prosecutor that "executing the ICC arrest warrants is a collective responsibility requiring intensified international cooperation."

On DRC, the case against Thomas Lubanga is the first. We are of course continuing to collect evidence in relation to other groups/crimes investigated in Ituri with the aim of a second case in the coming year. However, security conditions and the current volatility of the situation in the DRC are strong constraints on our investigative work at the moment. We are also planning to open an investigation in a third case in the DRC.

Our activities extend beyond those 3 investigations. As you know, we continue to receive hundreds of communications from individual and groups on alleged violations of the Rome Statute and we assess this information; we conduct or have conducted preliminary analysis in situations concerning countries from all continents. We are assessing the gravity and admissibility of the situations that could fall under our jurisdiction.

The Office of the Prosecutor's Assumptions for 2007

As made evident in the Prosecutorial Strategy, my Office's assumption is that we will conduct one full trial, the trial against Thomas Lubanga Dyilo, in 2007. Additionally, we will continue with a

second investigation in the Ituri region of the Democratic Republic of the Congo and we expect to request an arrest warrant in 2007. We also expect to begin a third investigation in the situation of the Democratic Republic of the Congo.

With regard to the situation in Northern Uganda, we have made our plans based on the assumption that the arrest warrants against the four remaining LRA commanders will be executed.

In our third situation, that of Darfur, the Sudan, we will continue our investigation and expect pre-trial activity to occur in 2007.

Finally, we expect to select a possible fourth situation before the end of 2006 and to carry out our investigation and pre-trial activity during 2007.

We have employed these assumptions as the basis for our budget proposal for 2007.

The Success of the Rome System is a Joint Responsibility

The President has highlighted in his presentation the important role that cooperation from States Parties and other stakeholders plays in achieving the Court's mandate. As the President just mentioned, it is essential that states and other relevant actors work with the Court if we are to achieve its mandate. The level of cooperation impact heavily on the efficiency and speed of the investigations led by the OTP.

Interestingly enough, the issue of cooperation with states and international organisations was also one of the main issues mentioned by the States themselves and the NGOs during the Second Public Hearings that my Office engaged in with interested states and civil society here in the Hague and in New York in September and October. I would just like to briefly mention some of the requirements that were addressed during those exchanges.

First of all, there is a requirement for general political support. We need that political support to extend to all the departments within your countries. We need this support to be expressed

in multilateral meetings, in the General assembly and in the Security Council.

To promote such efforts on your part, we recognize that there is a need to exchange information about the situation in the areas concerned between the OTP and States Parties. Some states have created an informal dialogue mechanism with the OTP involving country desk experts and embassies abroad. Let me confirm again our availability for such contacts.

Of course, there is also a need for more practical assistance. It was noted during The Hague meeting that the OTP should be more explicit about the types of cooperation needed by providing detailed, extensive and concrete requests for support. The understanding of the importance of cooperation and the need to provide more details about different forms of cooperation is shared by the whole Court and we will come back to States on this point.

Cooperation by states will be key in the areas of arrest and surrender. Another major field of cooperation is the protection of witnesses. Offering protection to witnesses at all stages of the proceedings is a statutory obligation for my Office, it is also a requirement for the integrity of our investigations and the relationship of trust we establish with our witnesses. Whenever there is a threat, and this can arise very early in the investigative process, months before an actual trial, we need to move quickly and efficiently; threatened witnesses cannot wait. The cost for the Registry which has the responsibility for such activities is immense; this is why the Court needs avenues such as agreements for relocation of witnesses.

Other concrete forms of assistance include of course the sharing of information and intelligence; I should also mention the provision of expertise in some specific fields such as forensics; then the provision of an airplane in a timely manner, as in the case of Thomas Lubanga, can prove of utmost importance.

It was also noted in The Hague meeting that the Court needs to consolidate and expand its relationship not only with States but with the UN and its various bodies and agencies. As indicated in the Prosecutorial strategy, it is one of our objectives. Our dialogue with the UN secretariat, the legal advisor of the UN or DPKO is intense. Ad hoc arrangements with specific agencies and programmes are pursued.

Your Excellencies, ladies and gentlemen, the recent exchanges I had with yourselves in The Hague

during the Public hearing, as well as my recent trip to New York have given me a lot of insight in what could or should be done in this area of cooperation. Hours spent in exchanging ideas, in receiving criticisms sometimes, was not wasted. This Court has a lot of different constituencies: states, NGOs, victims. The importance of receiving support from all these stakeholders is key for achieving the Court's mandate. We need this supportive environment and only through our combined efforts of outreach will we succeed. It is therefore essential that a programme as important as outreach should be sufficiently funded to enable the Court to fulfil its mandate.

Conlusion

Your Excellencies, ladies and gentlemen, thank you again for this opportunity to discuss aspects of the prosecutorial strategy with you today.

Appendix G: 9th diplomatic briefing

Cour
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International
Criminal
Court

Ninth Diplomatic Briefing of the International Criminal Court

Compilation of Statements

Check
Against
Delivery

The Hague, 29 March 2007

Luis Moreno-Ocampo, Prosecutor/Le Procureur

Excellencies, Ladies and Gentlemen,

As you will recall, at the last Diplomatic Briefing, I provided an update on the different situations; and I emphasized that the success of the Rome System is a joint responsibility. I detailed potential areas of enhanced cooperation, including political support; information-sharing; consolidation and expansion of our relationship with the UN; and finally, collaboration in the areas of arrest and surrender.

Today, I would like to provide an update on the OTP's activities and mention some of the present challenges for the effective implementation of the Rome System.

Cooperation to implement the Rome System

As the President indicated, many of the crimes under our jurisdiction occur in the context of ongoing armed conflict; as a consequence there is an interlink between the delivery of justice and efforts to secure peace and reconciliation. This was actually foreseen in Rome where the drafters of the Statute introduced a lot of provisions which can come into play: they set a high gravity threshold so that the Court would only have jurisdiction over the most serious crimes, they organized the complementarity regime and they introduced the reference to a Security Council role.

That being said, the decision taken in Rome in 1998 and ratified since then by 104 countries is clear: Lasting peace requires justice.

The Rome Statue established a new approach: victims are entitled to both peace and justice. Consequently, it is essential in any conflict resolution initiative to seek a solution compatible with the Rome Statute. We must be mindful of the mandate of the Court and not compromise on legality and accountability. Implementing this new paradigm means fulfilling our duty to respect and uphold the law. The Court depends on State support to consistently reiterate this point in your public statements and your bilateral and multilateral efforts. It must be made clear to mediators and negotiators in particular that when arrest warrants have been issued by the

Court, they must be implemented. While the Rome Statute does establish a complementarity system that allows the States concerned or the named individuals to challenge the admissibility, it must be clear that the final decision will rest with the Judges and that there can be no preliminary negotiation of the ICC's decisions. I cannot emphasize enough that your cooperation is needed in mainstreaming Court issues within international fora and in relevant decisions, reports, resolutions, declarations, and statements. Promoting respect for the independence of the OTP's justice mandate during conflict resolution initiatives is a priority.

This issue of political support for the Court will be one of the points highlighted in the consolidated report on cooperation that the three organs of the Court have prepared following the request of the Bureau.

Let me at this point explain the goal we the OTP are trying to achieve with this report. In our first years, we have had to deal with cooperation issues mostly on an ad hoc basis, as needs arose, and often on an emergency basis. As we are in a process of stabilizing the Office and establishing frameworks and procedures, we are now developing a more proactive approach to cooperation; the idea is to present examples of the types of cooperation required by the OTP well in advance, so that all States can determine in which field they could provide help and we can prepare a framework; thus when we are faced with emergency situations, we can act together swiftly and efficiently.

Already, since the first presentation made by the 3 organs of the Court to the Hague working Group on the 17th of January, we have noticed very positive reactions by States ; with the permission of the Spanish Ambassador, I would like to use the example of my recent visit to Madrid where all the different Ministries and relevant authorities had been informed of our priority list and were ready to study the possibilities of developing a framework for global cooperation with the Court, including the most sensitive fields such as intelligence sharing or extraction of threatened witnesses especially with the provision of emergency humanitarian visas – an area of course where the Registrar is leading. Less than 2 weeks after my visit this framework was put to use and the Spanish authorities responded to a sensitive request in less than 48 hours. I could use other examples, for instance South Korea – which is now working on the possibility of offering forensics services. I am also looking forward to a very important trip by the Registry and the OTP to Berlin on issues of cooperation. Of course such an approach should not lead to any breach in the confidentiality of our bilateral cooperation. Let me now move to an

update of our current situations to give you very concrete examples of the importance of securing political support and judicial cooperation.

Current situations

As you all know, the Office has had some important developments in the last few months. Notably, the Pre- Trial Chamber confirmed the charges against DRC militia leader, Thomas Lubanga Dyilo, so we are continuing our preparation for trial. And, on Darfur, we have submitted an application to the Pre-Trial Chamber naming two individuals in relation to 51 counts of war crimes and crimes against humanity. But we are confronted with a worrying stalemate in relation to Uganda, since the LRA commanders have not yet been arrested.

Let me start with Northern Uganda as it is a prime example of the challenges we are facing.

Our common challenge of course is to ensure the implementation of the Rome Statute; in this case it requires the enforcement of the arrest warrants. It is the law.

The crimes allegedly committed by the LRA in Northern Uganda have decreased since the issuance of the ICC warrants and the movement of the LRA into the DRC, but the LRA is still committing crimes in particular by keeping abducted children in their ranks; furthermore there are regular reports of LRA attacks in Southern Sudan and DRC as well as worrying reports of the LRA re-grouping and re-arming in preparation for a renewal of violence. There is also recent information of some LRA units, possibly including Kony and Otti, moving into or towards the Central African Republic.

Securing the arrest of the remaining four LRA commanders is on all counts a priority. Enforcing the decision of the Court on their arrest is important; it is important for the victims in Uganda and Southern Sudan, it is important for the credibility of the Court and its deterrent impact and it is important for the establishment of a legal framework worldwide.

The OTP is committed to galvanizing international efforts to execute the warrants. We are not directly involved in arrests, but we can help the States Parties concerned, especially the Government of Uganda, set up a network of countries and international organizations (e.g. UN, MONUC and UNMIS) to initiate contingency planning for arrest of the LRA commanders. We must

not lose a sense of urgency to arrest the four individuals we believe to be responsible for the worst atrocities in Uganda. We acknowledge that other complementary solutions could be satisfactory for other LRA members.

In January, I met with Mr. Chissano, the former President of Mozambique and current Special Envoy for LRA Affected Areas, to discuss this issue. I will have further discussions in New York next week to emphasize again that the 4 LRA commanders must appear before the judges. Regarding the peace negotiations, as we have always said, any solution can and must be compatible with the Rome Statute. We have taken a low public profile up to now to make sure the Court does not appear as if it is interfering in the peace process, but we are reassessing possibilities to expose better the horrific crimes committed by the LRA.

I count on your political support to emphasize that holding the remaining four LRA commanders accountable for their crimes is the law as established in Rome. It will prevent recurrent violence and contribute to sustainable peace and security. The victims in Uganda are entitled to peace, security and justice.

Democratic Republic of the Congo

As you all know, on 29 January, the Pre-Trial Chamber confirmed the charges against Thomas Lubanga Dyilo.

Beyond the actual proceedings, I would like to use the example of this case to explain how we can implement our goal of maximizing the impact of our case. On 5-6 February, I participated in a conference, "Free Children from War" co-presided by UNICEF and the French Ministry of Foreign Affairs and attended by the Secretary General's Special Representative for Children and Armed Conflict and the Director of UNICEF. My presentation provided only judicial information but it was interesting to note how most participants would use the facts we presented to advance their advocacy campaigns against the recruitment of child soldiers worldwide, with this new idea that it is indeed a serious crime and that it will be prosecuted.

To conclude on DRC, let me mention the ongoing second investigation, which is related to crimes allegedly committed by another Ituri armed group. We are of course confronted with the deterioration of the security situation on the ground. As you know, more than 1000 people were

killed during the last combats within Kinshasa. Our witnesses are threatened.

Finally, we are in the process of selecting a third case to investigate in the DRC. We hope to select it in the summer so that the investigation can commence before the end of 2007. This is an important process. More generally, I have asked the OTP to develop an overall strategy for the DRC to explain better our approach and to take into consideration the interests of victims.

The Situation in Darfur, the Sudan

Over the past 20 months, we have conducted an investigation into crimes allegedly committed in Darfur, the Sudan.

On 27 February 2007, we applied to Pre-Trial Chamber I for the issuance of summonses to appear against Ahmad Harun, former Minister of State for the Interior of the Government of the Sudan and current Minister of State for Humanitarian Affairs, and Ali Kushayb, a Militia/Janjaweed leader. Our case is about Ahmad Harun and Ali Kushayb working together to attack the civilian population in Darfur. There is no such investigation in the Sudan.

Ensure the appearance of the individuals in the Hague is the most difficult challenge. The Office has suggested a summons to appear could be the first option pursued. Our goal is efficiency. We assessed at the time of the application and we still assess that a summons to appear, an approach which clearly focuses on the individuals named, would be in the Sudanese context, the most efficient way to ensure the appearance of the named individuals. It would be of course the responsibility of the territorial State, the Sudan, to serve the summons and to facilitate the process. The formal reaction by the GOS will be decisive for the Judge's decision. The case is in their hands.

Let me also inform you that before and after the filing, we remained in contact with the authorities of the Sudan. They informed after the filing of the creation of the ministerial committee in charge of reviewing all aspects of the filing. They have published on the website of the Sudanese what seems to be an official position although it has not been confirmed formally to the OTP; it is interesting to note that the Government of Sudan while putting forward its objections to the Security Council referral has apparently decided to engage legally with the Court on the issue of admissibility; it is also worthy of interest that Ahmet Harun is now announced to be under investigation.

In support of the filing and to secure the widest support for our judicial activity, the OTP has actively engaged with Arab and African countries. I can only emphasize the support given to the OTP before and after our application by the Secretary General of the Arab League as well as the MFA of Egypt. Other Arab countries were also open and helpful while emphasizing that a scenario where arrest warrants would be issued could create a confrontational scenario where ability to support and cooperate with the Court would be affected. The Ministry of Foreign Affairs of Ghana as Presidency of the AU has been key in ensuring AU positive reaction. We visited the AU and gave a report on our activities. This constructive cooperation with the Court is also reflected in the way this issue was addressed during the Arab Summit in Riyadh. All those personalities were keen to promote the continued legal engagement of the Sudan with the Court. UN representatives including Mr Jan Eliasson with whom I talked a week ago, also emphasized the difficulties related to the peace negotiations, and the deployment of peace keepers. Next week I will brief the Secretary General of the UN on our activities.

The judges will review the evidence submitted and decide how to proceed. If the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the named individuals have committed crimes within the jurisdiction of the Court, the Chamber may issue either a summons to appear or a warrant of arrest against Ahmad Harun and Ali Kushayb.

As I noted at the ASP and at the press conference of the February filing, the Office is continuing to gather information about current crimes committed by all the parties in Darfur and is monitoring the spill-over of violence into Chad, including in the refugee camps, and into the Central African Republic, which are both State Parties. In the meantime, we hope that this case will contribute to stopping the violence.

Other potential situations

As you are aware we are also monitoring a number of other situations, some of which are already publicly known. In particular, in relation to Côte d'Ivoire, as part of the information gathering process the Office has proposed to the authorities of that country that we undertake a mission. A new letter was sent in December and we have not received any answer; we are continuing to press them. The UN has been very supportive on this matter.

With respect to the fourth situation, we hope to make the announcement before the summer. It is clear that this determination could lead us to open an investigation into another African country. This might lead to renewed perceptions in the public of an African bias. I hope you can help me to dispel this misperception. The Court is an important institution for African countries to put an end to impunity. Today, one third of all States Parties are African countries. The ideas of the Rome Statute are reflected in the Constitutive Act of the AU, which provides that the organisation shall function consistently with the "condemnation and rejection of impunity." We are working for African victims who have suffered in the past from the indifference of the international community. We cannot repeat the mistake.

The decision to open a new investigation is based on the law, it is not a sanction; it is the result of Africa's own leadership in promoting the fight against impunity.

Thank you.

Appendix H: 10th diplomatic briefing

Cour
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Criminal
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Tenth Diplomatic Briefing of the International Criminal Court

Compilation of Statements

Check Against Delivery

Brussels, 26 June 2007

Luis Moreno Ocampo, Prosecutor

Excellencies, Ladies and Gentlemen,

It is now 4 years since I became Prosecutor. Four years ago, the challenge was to transform the Rome Statute, a detailed body of law, into an operational system of international criminal justice. How to trigger cases, how to select situations where the worst crimes were committed, how to protect witnesses and investigate in situations of ongoing conflict were the issues to be addressed.

Over these 4 years, we have opened investigations in 4 situations – the Democratic Republic of Congo, Northern Uganda, Darfur, Central African Republic – all countries still engulfed at various degrees in conflict. Three situations were referred to us by the States themselves ; one situation, Darfur, was referred to us by the United Nations Security Council. In all cases, the Office of the Prosecutor has the same duty to carry out an independent and impartial investigation.

We also analyzed the situation in Venezuela and the activities of nationals of 25 States parties involved in Iraq. We are currently monitoring other situations in three different continents.

The Court is now operational. Our new and complex challenge is the enforcement of the judicial decisions.

I am grateful for this opportunity to present the current activities of my Office. Let me first update you on our cases.

The Situation in the Central African Republic (CAR)

On 22 May my Office announced the opening of an investigation in the Central African Republic. As a State Party, CAR referred the situation to the OTP on 22 December 2004. We also received significant communications by NGOs.

The OTP's investigation will focus on the most serious crimes, which were mainly committed during a peak of violence in 2002-2003. There are allegations of killings, looting and rapes. The high number of allegations of rapes and other acts of sexual violence, perpetrated against

hundreds of reported victims, is a distinctive feature of the investigation, with aggravating aspects of cruelty: multiple perpetrators, public rapes ; the social impact appears devastating.

In parallel, the OTP will continue to monitor closely allegations of crimes committed since the end of 2005 in the northern part of the country.

In liaison with the Registry we will conduct extensive outreach activities towards affected communities.

The Situation in Darfur, the Sudan

On 27 February 2007, I presented evidence to the ICC Judges. The Pre-Trial Chamber rendered their decision on 27 April, finding that the evidence presented offered reasonable grounds to believe that Ahmad Muhammad Harun, former Minister of State for the Interior, and Ali Muhammad Ali Abd-Al-Rahman, otherwise known as Ali Kushayb—a Militia/Janjaweed leader—joined together to persecute and attack civilians in Darfur.

The Prosecution's case demonstrated how Ahmad Harun organised a system through which he recruited, funded and armed Militia/Janjaweed to supplement the Sudanese Armed Forces, and incited them to attack and commit massive crimes against the civilian population; the Prosecution's case demonstrated that Ali Kushayb, by personally delivering arms and leading attacks against villages, was a key part of that system. Acting together, they committed crimes against humanity and war crimes.

Concerning the admissibility of the case, let me recall that the Prosecution application is concerned with Ahmad Harun and Ali Kushayb joining together to attack civilian populations in Darfur. There is no investigation in the Sudan into such criminal conduct. No proceedings have taken place in relation to Ahmad Harun. And the investigation on Ali Kushayb does not relate to the same incidents as those investigated by the Office; it does not connect Ali Kushayb to Ahmad Harun. The Sudanese investigations do not encompass the same persons and the same conduct which are the subject of the case before the Court.

The Pre-Trial Chamber concluded that the case against Ahmad Harun and Ali Kushayb falls within the jurisdiction of the Court and appears to be admissible.

The Government of the Sudan or the defendants can challenge this decision, but it has to be in front of the Court ,not in the media, not in political fora. Any decision on admissibility belongs to the judges.

On 7 June, I briefed the Security Council of the United Nations on the situation in Darfur. I recalled that the ongoing situation in Darfur remains alarming. There are 4 million people in need of humanitarian assistance in the region, constituting *two thirds* of the population of Darfur. There are 2 million internally displaced people, immensely vulnerable. There are continuing attacks against them and against international workers, as well as frequent impediments by the authorities to the delivery of assistance. Presiding over this dire situation is the same individual sought by the Court, Ahmad Harun, now Minister of State for Humanitarian Affairs.

It is of particular concern to my Office that, Ahmad Harun, who coordinated the crimes against the civilian population, crimes which forced their displacement, is still today the Minister of State for Humanitarian Affairs with the responsibility to monitor and affect these vulnerable people, and the international personnel helping them. I asked the Council to address this unacceptable situation.

Ladies and gentlemen,

The Darfur situation requires a comprehensive solution. The ICC is doing its part. The Office will complete its first investigation and will continue to evaluate information about current crimes. As the Rome Statute emphasizes, justice for past and present crimes will enhance security in Darfur.
The Security Council and regional organizations must take the lead in calling on the Sudan to arrest the two individuals and surrender them to the Court. The territorial State, the Sudan, has the legal obligation and the ability to do so. And we count on every state to execute an arrest should either of these individuals enter their territory.

Democratic Republic of the Congo (DRC)

The situation in the DRC was referred to us by the Congolese authorities. As you know, the situation in the DRC, in terms of gravity of crimes committed since the entry into force of the Statute, is the worst within our treaty jurisdiction.

In very difficult logistic and security circumstances, we have completed the investigation of the first case involving the prosecution of Thomas Lubanga Dyilo, leader of the most dangerous militia in Ituri; our evidence shows that he is individually responsible for the crimes of enlisting, conscripting and using children under the age of 15 years to participate actively in hostilities.

On 29 January, the Pre-Trial Chamber confirmed the charges against Thomas Lubanga Dyilo. As the President said we are preparing to go to trial.

The OTP has also conducted a second investigation in the DRC related to crimes allegedly committed by another armed group in the region of Ituri. We expect to present the case before the judges in a near future.

Finally, we are selecting a third case to investigate in the DRC. We will do it before the end of 2007. This is an important process, taking into consideration the views and interests of victims.

In the DRC, the worst problem we are confronted with at the moment is the security of our witnesses. As you know the Registry is responsible for witness protection and the Registrar will further elaborate on this issue in his presentation, but I want to emphasize how grateful we are for his efforts. The problem is affecting all of us and must be solved in the framework of the "One Court principle". I call upon you to support the Registry efforts.

Northern Uganda

On 6 May 2005 the Office requested warrants of arrest for Joseph Kony and four senior leaders of the LRA.

On 8 July 2005 the Pre-Trial Chamber issued the warrants of arrest for crimes against humanity, including enslavement, sexual slavery, rape and murder, and war crimes.

The OTP, in liaison with other Organs of the Court, is committed to galvanizing international efforts to execute the warrants.

Other national mechanisms can be useful for the other combatants, those who want to give up

arms and rejoin their families, those who did not bear the greatest responsibility.

Enforcing the decision of the Court on their arrest is important; it is important for the victims in Uganda and Southern Sudan, it is important for the credibility of the Court and its deterrent impact and it is important for the establishment of a legal framework worldwide. The victims in Uganda are entitled to peace, security and justice.

Other potential situations

We are also monitoring a number of other situations, some of which are already publicly known. In particular, in relation to Côte d'Ivoire, as part of the information gathering process the Office has proposed to the authorities of that country that we undertake a mission. A new letter was sent in December and we have not received any answer; we are continuing to press them.

Cooperation

The President has underlined the importance of State cooperation to implement our mandate. Let me emphasize this point. The investigative activities I just described would not have been possible without the cooperation of States. Visas for our witnesses, use of facilities for our interviews, exchange of information, evacuation of threatened staff in deteriorating security situations : the daily support of States and international organizations to our investigation is key. As reflected in the structure of my Office, the needs and functioning of investigation, prosecution and cooperation are absolutely intertwined in our work.

In order to facilitate the participation of States Parties in implementing the principles embodied in the Statute, we are developing a more proactive approach to cooperation. Our goal is to provide States with a clearer sense of the types of cooperation required by the OTP. Our objective is to give States the information they need to prepare a framework for cooperation with the Office and the Court as a whole; thus when we are faced with emergency situations, we can act together swiftly and efficiently. This process is working well.

The challenge I see at the moment is more related to the enforcement of the law. How to ensure the enforcement of the Court's decisions? How to ensure, in particular, the arrest and surrender of individuals sought by the Court? How to ensure the enforcement of the Court's decisions in

situations where the international community is trying to achieve in parallel many objectives; re establishing security, providing humanitarian assistance, promoting political dialogue between the parties to the conflict, and preparing for reconstruction and development.

As the Prosecutor of the ICC, I was given a clear judicial mandate. My duty is to apply the law without political considerations. I will present evidence to the Judges and they will decide on the merits of such evidence.

And yet, for each situation in which the ICC is exercising jurisdiction, we can hear voices challenging judicial decisions, their timing, their timeliness, asking the Prosecution to use its discretionary powers to adjust to the situations on the ground, to indict or withdraw indictments according to short term political goals. We also hear officials of States parties calling for amnesties, granting of immunities and other ways to avoid prosecutions, supposedly in the name of peace; we can hear voices portraying the ICC as an impediment to progressing further with Peace processes.

These proposals are not consistent with the Rome Statute. They undermine the law States parties committed to. It is essential to ensure that any conflict resolution initiative be compatible with the Rome Statute, so that peace and justice work effectively together. Arrest warrants are decisions taken by the judges in accordance with the law, they must be implemented. States parties and other stakeholders must remain in all circumstances aware of the mandate given to the Court; there can be no political compromise on legality.

The beneficial impact of the ICC, the value of the law to prevent recurring violence are clear. Arrest warrants have brought parties to the negotiating table; have contributed to focus national debates on accountability and to reducing crimes ; exposing the criminals and their horrendous crimes has contributed to weaken the support they were enjoying, to de-legitimization them and their practices such as conscription of children ; on the longer term, the Court will contribute to harmony or at least peaceful co-existence between former enemies as a sense of justice and reparation is achieved.

The tension I see in Uganda is not between Peace and Justice. It is not the decisions of the International Criminal Court which undermine peace processes and conflict resolution initiatives.

It is the lack of enforcement of the Court's decisions which is the real threat to enduring Peace. Allowed to remain at large, the criminals exposed are continuing to threaten the victims, those who took tremendous risks to tell their stories; allowed to remain at large, the criminals ask immunity under one form or another as a condition to stopping the violence. They threaten to attack more victims. We cannot yield.

The challenges are immense for political actors. The Rome treaty is a new system, global standards have been established without a global police or enforcement apparatus; enforcement of Court's decisions is the responsibility of national states.

Dealing with the new legal reality is not easy. It needs political commitment; it needs hard and costly operational decisions: arresting criminals in the context of ongoing conflicts is a difficult endeavour. Individuals sought by the Court are often enjoying the protection of armies or militias, some of them are members of Governments eager to shield them from justice.

Those difficulties are real. They can however not lead us to change the content of the law and our commitment to implement it. In all situations, more State cooperation in terms of securing arrests is needed. For the ultimate efficiency and credibility of the Court you created, arrests are required. The Court can contribute to galvanize international efforts, and support coalitions of the willing to proceed with such arrest. But ultimately, the decision to uphold the law will be the decision of States parties.

Thank you.

Appendix I: 11th diplomatic briefing

Cour
Pénale
Internationale

International
Criminal
Court

Eleventh Diplomatic Briefing of the International Criminal Court

Compilation of Statements

The Hague, 10 October 2007

Luis Moreno-Ocampo, Prosecutor/Le Procureur

Excellencies, Ladies and Gentlemen,

The President has described the challenges that we, together with States parties, are confronted with.

The concept of the Rome treaty has become a reality. The Court has made this body of law operational, has transformed ideas and concepts into a working system. States parties which committed to the new law are now facing a more difficult challenge: enforcing the law, enforcing the Court's decisions.

Ensuring the enforcement of the Court's decisions, ensuring, in particular, the arrest and surrender of individuals sought by the Court, in all situations before the Court, requires your support.

Such support can take a variety of forms:

1. Political support. In any bilateral meeting, in any multilateral activity, in any development program, the States Parties should automatically mention the need to respect and implement the ICC judges' decisions.
2. Marginalization of the individuals sought by the Court to facilitate their arrest. No support, no supplies, no financial aid should reach indicted individuals. They have to be isolated within their own communities.
3. Tracing of whereabouts of the individuals sought by the court.
4. Planning and execution of arrest operations.

Let me describe how this can apply to each situation.

<u>The Situation in the Democratic Republic of the Congo (DRC)</u>

In the case against Thomas Lubanga Dyilo, we are preparing to go to trial.

The OTP is also completing its second investigation in the DRC related to crimes allegedly committed by another armed group in the district of Ituri. Any arrest warrants issued would have to be enforced. We hope to be able to make the results of this second investigation known before the end of the year.

Finally, we are in the process of selecting a third case to investigate. We are monitoring to this end the overall situation and collected information on alleged crimes committed by individuals and armed groups in different provinces and at different periods under our temporal jurisdiction. Among others, there are allegations of massive sexual violence, forced displacements of persons, killings or pillaging in most of the Eastern parts of the DRC, including the Kivus.

DRC is a situation where your political support is concretely needed. There are a lot of issues on the agenda of the international community in the DRC: demobilization and reintegration of militia into the national forces; security. Justice could easily be pushed off the agenda. Consistent support to international justice is being tested.

I have raised the subject of keeping cooperation with the Court on the DRC agenda with the Secretary General of the UN on the 28th of August, with Legal Advisor Nicholas Michel, Under Secretary General Jean- Marie Guehenno and with SRSG Swing in Kinshasa. The UN Secretary General and his team have accepted to raise it at the highest level with the DRC authorities. I have also raised this matter with the EU Special Representative for the Great Lakes; he and several States committed to provide their support for my demarches; I am grateful to them.

Following such efforts, the reaction from the DRC authorities has been positive. We are very hopeful that this will lead to concrete steps being undertaken in the near future.

Given the importance of maintaining such diplomatic activities, we urge you to request from your authorities that any bilateral meeting with the DRC authorities, President Kabila in particular, be the occasion to explicitly mention cooperation with the ICC. As States parties, as members States of the UN which are actively supporting the demobilization process, it is important that you should also express your full support to the Court. In the same way, any multilateral meeting on the DRC in the UN context should be used to mention the ICC. Silence is undermining us ; but any expression of support is helping us.

The Situation in Northern Uganda

Warrants of arrest for Joseph Kony and senior leaders of the LRA for crimes against humanity and war crimes were issued on 8 July 2005. They are still outstanding.

As I have stated in the ASP last year, those warrants must be executed. There is no excuse. There is no tension between Peace and Justice in Uganda: arrest the sought criminals today, and you will have Peace and Justice tomorrow. Victims deserve both.

The 4 criminals have threatened to resume violence if the arrest warrants are not withdrawn; they are setting conditions; it is blackmail; the international community has to ensure protection for those exposed to those threats.

My Office has again devoted efforts to galvanize national and international efforts to arrest. A lot can be done by all of you to support these efforts.

- Joseph Kony and the three other indicted commanders have re-gained credibility in the past months.

  We ask all States Parties to contribute to their re-marginalization and to use all public occasions to recall that those 4 individuals are responsible for massive crimes; abduction of children; transforming them in killers or sexual slaves. The LRA is continuing to commit crimes as no children have been released, as no sexual slaves have been freed; UNICEF and the UN Special Representative of the Secretary General on children in armed conflicts stated that the LRA should release the abductees immediately;
- Joseph Kony and the three other indicted commanders have regained strength and financials means. We ask States Parties to monitor with utmost vigilance supply networks, possible diversion of aid and funds to the benefit of the sought individuals. We thank States parties which have renewed efforts to monitor assistance from Diaspora communities to the LRA ; it must be recalled that any assistance that can help the sought individuals abscond from the Court would be illegal ;
- Joseph Kony and the three other indicted commanders have become a regional power, threatening stability in the sub region. We ask all States parties to support collaborative efforts between the DRC and Uganda to address the issue of arrests; we hope that the support of

MONUC will remain forthcoming.

As you can see, at a national level, or in multilateral fora, each of you can do a lot to contribute to arrests. The speech of the Belgian Prime Minister during the 25th of September UNSC summit is a good example. I would be extremely grateful if you could keep the Office updated of any step taken in furtherance of such requests for support.

The Situation in the Central African Republic (CAR)

On 22 May we announced the opening of an investigation in the Central African Republic.

The OTP's investigation will focus on the most serious crimes, which were mainly committed during a peak of violence in 2002-2003 and with a particularly high number of allegations of rapes and other acts of sexual violence, perpetrated against hundreds of reported victims.

As the CAR has not yet any implementing legislation, we have prepared a draft cooperation agreement specifying in particular channels of communications between the Office and CAR for the processing of our requests for judicial assistance[1]. The text will be signed shortly. However, we have already started our investigative activities on an *ad hoc* basis.

Cooperation wise, we would again request all States parties to mention the need for cooperation with the ICC in all bilateral or multilateral meetings with the CAR. 6 States parties have an Embassy locally in Bangui. A good opportunity to address the issue is offered by the Donor Roundtable that will take place in Brussels on 26 October that a number of States parties will attend (Canada, France, Germany, Italy, Japan, Peru, Slovakia, South Africa, The Netherlands, UK) alongside Organizations such as the World Bank, the IMF, the African Union.

Finally, we hope to benefit from the full cooperation of the EU Force to be deployed in CAR. We are thankful for the support already given by the EU Delegation in Bangui.

The Situation in Darfur, the Sudan

On 7 June, I briefed the Security Council of the United Nations on the situation in Darfur. I emphasized that the territorial State, the Sudan, has the legal obligation and the ability to arrest Ahmad Harun, former Minister of State for the Interior and Ali Kushayb, a Militia/Janjaweed leader and surrender them to the Court.

I described how Ahmad Harun, responsible for the forced displacement of millions of people into camps, is now controlling his victims, in his new position as Minister for Humanitarian affairs. I urged key partners— the African Union, the League of Arab States, the United Nations and the European Union—to call on the Sudan to arrest and surrender the sought individuals to the ICC.

However, the issue of enforcement of the arrest warrants has been put off the agenda of relevant international meetings.

Justice was not formally on the agenda of the UNSC trip to Khartoum following my report. Justice was not mentioned in the UNSG subsequent reports on Darfur where the UN secretariat developed a three prong approach with a humanitarian, political and security components only. Not justice.

I have engaged in efforts to raise awareness of the need for execution of the arrest warrants. Efforts have included high-level meetings with senior UN officials, including the Secretary General Mr Ban Ki Moon prior to his visit to Khartoum and with the Arab League Secretary-General Amr Musa. I also addressed the issue in New York in September on the eve of the UNSC Summit on Africa, and of the 2nd meeting of the extended contact group on Darfur. I explained to my interlocutors that the Court needed first and foremost words expressing their political support. Their silence could be interpreted as a weakening resolve of the international community on the enforcement of the arrest warrants. Their silence could encourage the provocative gesture of promoting Harun instead of removing him from Office.

I am grateful for the efforts of Ambassadors and advisors who managed to secure references to the arrest warrants in high level speeches of Ministers and Heads of Government, among them the UK, Germany, the Netherlands, Portugal on behalf of the EU, Denmark, Australia, Trinidad and Tobago, New Zealand and Lichtenstein.

The issue will not go away. On 5th December 2007 I will inform officially the UN Security Council, that the Sudan is not cooperating with the Court. The Sudan is not complying with Security Council Resolution 1593.

Finally, let me mention also that we are continuing our investigative activities in neighbouring Chad and have requested the assistance of the future EU mission in Chad on issues of security.

Conclusion

As a Prosecutor, I have been approached by States and other stakeholders suggesting that the responsibility to secure arrests lies in large part with the Prosecution. They suggested more requests for arrest warrants targeting lower level perpetrators, easier to arrest than Ministers or powerful militia leaders. I wish to take the occasion of this briefing to state clearly that the Prosecutorial policy, in accordance with the Statute, will seek to investigate and prosecute those most responsible for the most serious crimes of concern to the international community, based on the criminal evidence we collect and subject only to the judicial review of the Chambers.

The Rome Treaty consolidates the "duty of every state to exercise its criminal jurisdiction over those responsible for international crimes" but also to support a permanent International Criminal Court whenever and wherever the Court decides to intervene. They have to "guarantee lasting respect for and the enforcement of international justice". They have to seriously address the issue of arrest.

Thank you.

Appendix J: 12th diplomatic briefing

Cour
Pénale
Internationale

International
Criminal
Court

Twelfth Diplomatic Briefing of the International Criminal Court

Compilation of Statements

The Hague, 18 March 2008

Luis Moreno-Ocampo, Prosecutor/Le Procureur

Excellencies, Ladies and Gentlemen,

Since our last meeting in October 2007, our interaction has been sustained at all levels: in the field, here in The Hague, and also in New York. I would like to highlight the support you generated for the work of the Court on Darfur by attending the Security Council meeting of 5 December in New York, as it coincided with the meeting of the Assembly of States Parties (ASP).

It has been a key moment. It demonstrated how strong we are when we work together while respecting our different identities. It was only a moment in time; it is clear that more efforts will be needed by all of us to transform such a moment into concrete and continued support to the Court. But we had a glimpse of the potential strength of international justice. It was a message that the ASP, the NGOs and the Court gave to the Security Council. It was also a strong message to perpetrators and potential perpetrators of crimes, showing that the Court enjoys wide support. It was a strong message of commitment to the victims.

Since October 2007, I visited Colombia to meet with victims, judges, prosecutors and national authorities. We announced the beginning of the second and third investigations in Darfur during our meeting at the Security Council. We secured the arrest of Mathieu Ngudjolo in the DRC. I travelled to the Central African Republic to meet with victims. We are preparing the beginning of the Lubanga trial and the confirmation hearing of our second DRC case.

Today, I will present an update of our cases and analysis activities. I will also, in response to requests by States to be very specific on the types of cooperation we look for, describe in each case the support we need and how the support you give is making a difference. A recurring concern in most situations under investigation or analysis is the need for States Parties to consistently maintain the commitment taken in Rome to end impunity. I feel that such commitment needs to be particularly borne in mind in the context of any conflict management initiative.

1. - Let me update you on the cases.

The Situation in the Democratic Republic of the Congo (DRC)

For the last four years we have been conducting investigations in the DRC as a conflict was ongoing. With the support of VWU we managed to minimize the risk for our witnesses. To-date no OTP witnesses have been wounded or killed. The Court fulfilled its duty of protection established in art 68 (1) of the Statute.

No we are facing a new challenge. We are conducting trials and confirmation hearings. Although conflict is still ongoing and protection needed, confidentiality is no more an option. We have the duty to disclose the identity of each witness to the accused. The defence has to check and challenge the credibility of our witnesses.

All the witnesses living in the Ituri region are at risk. Members of the armed groups such as UPC and FNI are still active and influential in this region and pose both a general and very tangible threat to our witnesses and their families and dependants as soon as their identities or their testimonies are disclosed.

Each one of them has to be protected. The Prosecution foresaw this problem early on. Our policy of focussed investigations was established to reduce the number of witnesses to a minimum. We have 34 witnesses for the entire Lubanga case. The standards of protection were approved in the Strategic Plan of the Court. All foreseeable risks should be eliminated. This is my duty pursuant to the Statute.

But the Statute developed a system of protection which relies for the implementation of protective measures on an independent unit within the Registry. How to harmonize positions when there is a different appreciation between the OTP and the Registry? In such case who is responsible for the implementation of measures required to protect witnesses? Those are essential issues.

If the Prosecution's witnesses are not protected, the Prosecution can not fulfil its role. My position is clear: the OTP will help to establish provisional measures of protection, but can not replace or duplicate VWU. This is why the discussions in both Chambers on how the protection system of the Court works are so important.

- In the Thomas Lubanga Dyilo case, the Prosecution is confident that we have all the evidence required. Proving the case is of course my responsibility. But maximizing the impact of the case can be a common task of the Court and States Parties. Any ruling in the case will be

important for the prevention of child recruitment in the DRC, Colombia and other countries. Any ruling will be a message that transforming children in soldiers is a crime, a crime that will be prosecuted. The Amicus curiae by Radika Coomaraswamy, Special representative of the Secretary General on children in armed conflicts, that was just submitted is already an important document in this regard.

This first trial is also an opportunity to demonstrate to all perpetrators and potential perpetrators of crimes within the jurisdiction of the Court that the ICC is operational, not a vague threat any longer, but a very direct one. Your suggestions on how to maximize the impact of the first trial of the ICC would be very helpful.

- With the arrest and transfer of Mathieu Ngudjolo, my Office has completed a first phase of its DRC investigation, focusing in two cases on crimes committed by leaders of armed groups in Ituri since July 2002. We are now moving on to another investigation, with other applications for arrest warrants to follow in the coming months and years.

Different options are being analyzed about our third and possibly fourth case. Among others, there are reports of sexual violence of shocking brutality, of forced displacements, of killings in the Kivus, committed by the regular soldiers of the DRC, by the FDLR and by Laurent Nkunda's forces. We held a meeting at the seat of the Court on the 13th of March with international and local NGOs to consider the available information; I also met with the High Commissioner for Human rights Louise Arbour last week. The extent of the violence but also its dispersion, which makes it difficult to define the most responsible, was commented upon by all. Other options for investigation include the case of high officials in the region who have financed and organized militias.

Cooperation needed

- First, political support: I wish to emphasize as the President did the particular significance of the arrest of Mathieu Ngudjolo. While Thomas Lubanga Dyilo and Germain Katanga were already in detention in the DRC before their surrender to the Court, Mathieu Ngudjolo was a free man; a man who was part of the demobilization process and a man who had benefited from an amnesty in the past. He was a Colonel in the Congolese army. This was basically the first real arrest for the Court, and it was

performed with the cooperation of the DRC authorities, the UN and Belgium.

- I was disturbed however to receive information that some members of the diplomatic community in Kinshasa , including State Parties and the UN, were expressing the view that this arrest would break down the DDR process or rekindle conflict in Ituri. This, coming from States Parties, is a confusing message sent to the territorial State; there might be requests for cooperation in the future which may be even more complex. There must be a more consistent approach by diplomatic representations that requests for assistance and decisions of the Court have to be executed.

- It is also important that we fight this perception that ICC intervention is doomed to prolong conflict and create more violence. It is not true in the DRC, it is not true in Uganda, and it is not true in Darfur.

- Finally, I draw your attention to the fact that, given the developments in Uganda and the sense that the international community seems willing to negotiate away international justice, Nkunda and others are now questioning the Goma agreement which excludes any amnesty for crimes within the jurisdiction of the Court. We ask that your authorities take any occasion to reaffirm in relation to the DRC situation that the commitment to end impunity is not negotiable. It is the law. Please inform my Office of any such statement.

The Situation in Northern Uganda

The Court has issued its first arrest warrants against Joseph Kony and other LRA commanders in 2005. Those arrest warrants remain in effect and have to be executed. Joseph Kony and his fellow commanders committed unspeakable crimes. Evidence shows their criminal responsibility for thousands of killings and abductions since July 2002. Joseph Kony transformed children into killers and sex slaves. Joseph Kony forced them to kill their parents and brothers. Joseph Kony attacked boarding schools, abducting not one or ten but all the schoolgirls to offer them as rewards to LRA officers. Joseph Kony slaughtered and terrorized the population of Northern Uganda forcing 1.6 millions into camps for displaced persons.

In the course of our investigation, we also collected information on its strategy to use crimes to get international attention: he attacked camps and killed what he considered a

sufficient number of people to get attention. Incredibly he succeeded. Joseph Kony, the first indictee of the ICC, has managed to be portrayed as a man looking for peace. Joseph Kony has received money and food, resources that he has used to enlarge and strengthen his group. In exchange for his crimes and his refusal to surrender and free the abductees, Joseph Kony receives an offer to sign an agreement that does not mention the arrest warrants and contains a promise of a deferral of investigations under article 16.

Joseph Kony is covering up his crimes. And he is winning. My Office has been approached by top international negotiators in Juba to actually discuss how to withdraw the arrest warrant with a LRA delegation. I confirm that I will only meet Joseph Kony's lawyers in Court. I have a strong case, an admissible case.

In accordance with the Statute I have to investigate and prosecute crimes in order to contribute to the prevention of future crimes. I am concerned at deliberate efforts to deny the reality of past, present and future crimes committed by Joseph Kony. The LRA is continuing to commit crimes: no children have been released; no sexual slaves have been freed as noted by UNICEF and the UN Special Representative of the Secretary General on children in armed conflicts.

Denial of past and present crimes is a major concern. My Office has been told informally by international authorities that now was not the moment to probe further into allegations of crimes committed by the LRA in DRC, Southern Sudan and CAR, that 'at this sensitive juncture of the Juba talks it was better not to publicize such information". I cannot be part of this. The international community has to conduct conflict management initiatives, but none of us should deny reality. We have to respect the facts and the law.

In terms of investigations, we are in the process of confirming judicially, through interviews with defectors, that Joseph Kony killed Vincent Otti ; that money and goods delivered for humanitarian purposes reached him and allowed him to plan further crimes ; that the LRA is moving to Central Africa Republic.

There is a lot to do to end violence in Northern Uganda. Offering Joseph Kony an exit strategy, or immunity under one form or another is not the way.

Cooperation needed:

- Joseph Kony and the other indicted commanders have re-gained credibility in the past weeks. We ask all States Parties to contribute to their re-marginalization and to use all public occasions to recall that those individuals are responsible for horrific crimes.
- Joseph Kony and the three other indicted commanders still have access to financials means from the diasporas or from diversion of assistance. We ask States Parties to monitor with utmost vigilance supply networks, possible diversion of aid and funds to the benefit of the sought individuals. It must be recalled that any assistance that can help the sought individuals abscond from the Court would be illegal.
- We ask all States Parties to support collaborative efforts between the DRC, Uganda and others to address the issue of arrests; we hope that the support of MONUC will remain forthcoming.

The Situation in the Central African Republic (CAR)

My Office's investigation is continuing to focus on the most serious crimes, which were mainly committed during a peak of violence in 2002-2003. As the President indicated, I travelled to Bangui on 7 February 2008. During my visit, I was able to speak with victims, representatives of civil society and local population to answer questions.

We hope to submit an application to the Judges during the current year. However our investigation is delayed at the moment by the absence of answers to requests for cooperation made in June of 2007.

In terms of present crimes, it seems that no proceedings have been initiated; I insisted with President Bozizé during my recent visit that such proceedings had to be initiated. Philip Alston, the UN special rapporteur on summary executions who travelled to Bangui at the same time as myself, did the same. It is important that all States Parties with an Embassy in CAR (Chad, Congo, the DRC, France, Japan, and Nigeria) seize the opportunity of any meeting with President Bozizé or his Ministers of Justice and Defence to stress this imperative.

The Situation in Darfur, the Sudan

As I informed the UN Security Council and the ASP in December, the Sudan is not cooperating with the Court. We also announced two new investigations. The first investigation looks into

who is bearing the greatest responsibility for ongoing attacks against civilians; who is maintaining Harun in a position to commit crimes; and who is instructing him. The second investigation concerns allegations of rebel attacks against peacekeepers. We will issue our first application to the Judges this year.

We will report again to the UNSC in the first week of June. I understand there might be another coincidence of dates with the resumed ASP and hope to see again a number of delegations in the room.

We are conducting a number of activities in Chad and other countries of the region. In the case of Chad, the main challenges faced by our operations are related to security both for our witnesses and our staff. The Court has engaged with the EU and the UN to request assistance from the UN Mission MINURCAT and the European Union Operation EUFOR.

In order to explain our activities, prepare for the presentation of the next report to the UNSC and foster support for the arrest of A. Harun, I have travelled to a number of the Sudan' neighboring countries or partners : Qatar, Egypt including a meeting with the Arab League, Jordan. I will be visiting Indonesia, a member of the UNSC and Saudi Arabia shortly. It is part of my mandate to improve efficiency and show our impartiality. I emphasize the efforts by all the countries concerned to follow up on the visits, to inform me of conversations with envoys sent by Khartum on this issue, or other high level conversations. Though Harun is still in the Sudan, the attitude of those States, mostly non States Parties, is a mark of respect for the Court as an institution. We have also ensured that no negative message on the ICC would be adopted in forthcoming regional meetings.

Cooperation needed:

- Our principal objective is to make sure that the issue of enforcement of the arrest warrants is not put off the agenda of relevant international meetings. In particular, I will travel to NY this week and insist that the arrest warrants should be on the agenda of the UNSC trip to Khartoum in May or June. Those of you members of the UNSC can help in this regard.

- We also still need more States to raise the issue of the arrest warrants with Khartum. Only one State Party has informed us of such bilateral exchange since December. I am grateful

for the effort but others must join as the Sudanese authorities must get a sense of a strong and consistent message from the international community. We are also looking forward to close cooperation with the Slovenian presidency of the EU.

- Finally, RFAs on the tracing of Harun and on his activities within the Sudan have been and will be sent. I urge States Parties to give them their utmost attention and to contact my Office should they have questions.

2. – Let me now turn to our analysis activities.

Based on Article 15, my Office proactively collects information about alleged crimes falling under the Court jurisdiction. Currently we are analysing situations on three continents. Let me mention those that were or that we have decided to make public.

Regarding Cote D'Ivoire, the authorities have not taken appropriate steps to facilitate an OTP mission despite repeated requests. We urge all States Parties to put this issue on the agenda of any bilateral meeting with CDI. No State party has ever informed us that it had done so.
In Colombia, the purpose of the October mission was to receive information to assist the evaluation of ongoing national proceedings against those most responsible for crimes – whether members of the FARC, the paramilitary or others - that fall within the jurisdiction of the ICC. The Office but also a number of non governmental actors and UNICRI are following up on our visit.

Regarding Kenya, following allegations of killings and displacements,I have sought further information under article 15 (2) from a range of institutions in the country. I have also met with former Secretary General Kofi Annan

Finally, the Office has decided to make public its analysis activities in Afghanistan. Letters under article 15 (2) will be sent to the Government and other actors.

All these steps are taken in the course of our examination of situations under Article 15. We are trying to be as informative as possible. But no decision to open an investigation has been taken and there should be no presumption that such an investigation will be opened.

Conclusion

In conclusion, let me join the President in recognizing the work of the Registrar Bruno Cathala. After 5 years Bruno is going back to France to be the President of the Evry tribunal. He will be a judge again. We are losing a man with a passion for this Court, with a vision for this Court. What will remain however is a strong legacy.

His legacy include the system of legal aid, the structure for victims participation, an electronic court, the project for permanent premises and a building that will be a symbol of justice for different communities. Without Bruno Cathala, we would not have a detention centre that is quoted as a model. He contributed to building the identity of the Court as an independent, impartial and participatory ICC. I will miss him. But his departure will also show the strength of his legacy; it will show that the institution he built is bigger than its members, even its founding members. Bruno's efforts will endure.

I want to thank him on behalf of the OTP and its staff. Thank you.

Appendix K: 13th diplomatic briefing

Cour
Pénale
Internationale

International
Criminal
Court

Thirteenth Diplomatic Briefing of the International Criminal Court
Treizième réunion d'information de la Cour pénale internationale à l'intention du corps diplomatique

Compilation of
Statements
Recueil de déclarations

Brussels, 24 June
2008
Bruxelles, 24 juin
2008

Mrs. Fatou Bensouda, Deputy Prosecutor/Procureur Adjoint

Excellencies, Ladies and Gentlemen,

Thank you for being here. Since our last meeting in March 2008, the interaction between the Office of the Prosecutor and you has been sustained at all levels.

On 5th June 2008, as the Prosecutor presented his Report to the UN Security Council on Darfur, States parties to the Rome Statute, participating to the ASP, attended and it is symbolic that the move to secure a Presidential statement of support to the Court's work on Darfur was led to fruition by the President of the ASP, a member of the UNSC, Costa Rica.

The adoption by the UNSC of a unanimous presidential statement on 16 June calling on Sudan to comply with its obligation to cooperate with the Court under 1593 was a strong message of commitment to the Court, to the work of the Office, and to the victims. It was also a strong message to perpetrators and potential perpetrators of crimes, showing the strength of international consensus on Justice beyond any regional boundaries.

In recent weeks, we have also received the marked support of the European Union through its Presidency, Slovenia, its Parliament and through the adoption of the General Affairs and External Relations Council Conclusions on Darfur on 16 June, following the Prosecutor's briefing to that Council.

The Prosecutor travelled to Indonesia and Saudi Arabia. He is going shortly to Libya. I personally had an occasion to brief here in Brussels the countries of the ACP and it was a fruitful exchange. I will be travelling next week to Sharm El Sheikh to attend the African Union Summit.

Each of such contacts is the occasion to secure both concrete judicial cooperation and political support for our justice efforts. It is this kind of constant building up of a network of cooperation which allowed the Office and the Court to secure the assistance of Belgium, Portugal and others for the arrest of Jean-Pierre Bemba on 24 May here in Brussels in a short timeframe and in smooth conditions of confidentiality and efficiency. We hope to maintain this level of support and cooperation throughout our situations and activities.

As the President said, key and innovative provisions of the Rome Statute, regarding victims'

participation and witness protection, the rights of the accused are being clarified by the judges of the Court. In the weeks to come, there will be defining moments for this Court: as Prosecutors, we trust that a new date will be set for the Lubanga trial; the Confirmation of charges hearing in the case against Germain Katanga and Mathieu Ngudjolo Chui on 27 June; the start of the Lubanga trial; and the Office will present a new application to the judges under article 58, in our second case in Darfur, in July.

I will focus my brief on the Office's investigative activities, which are expanding, with the prospect of our third case and possibly fourth cases in the DRC, as well as work on our second and third cases in the Darfur situation. I will also brief you on our investigative activities in the case of Northern Uganda.

1. - Let me update you on the cases.

The Situation in the Democratic Republic of the Congo (DRC)

Concerning the case against Thomas Lubanga Dyilo, let me just repeat the words of the Prosecutor. This is a permanent Court. We are building an institution for the world and for the coming years. The Court is defining its legal standards for the next years and for all its upcoming cases. This Court must insist on the highest legal standards, and fair trial is the most important of all.

The Prosecution has of course appealed the Decision to stay the proceedings in the strongest terms. But if the Court decides that it is not the moment to start a trial because there are issues that need to be considered, it is the law. And it is full respect for the law that will ensure the enduring authority and legitimacy of this Court. I am confident that the legal problems will be solved and a new beginning of the trial will be scheduled very soon, but it will be the decision of the judges.

We need to understand the logic behind this decision. As a legal institution the Court must continue to insist on defining and clarifying the legal standards as the basis of the Court's activities. Fair trials are fundamentally important.

The Court has also pursued its efforts to promote enforcement of the arrest warrant against Mr. Bosco Ntaganda, a former subordinate of Mr. Lubanga, who is also charged with the war crimes of enlisting, conscripting and using children under 15 to participate actively in hostilities. The arrest

warrant, initially issued under seal in 2006, was unsealed in April 2008 upon request of the Prosecution. Mr Ntaganda is allegedly the current Chief of Staff of the *Congrès national pour la défense du peuple* (CNDP) an armed group, active in North Kivu in the DRC.

The Confirmation of Charges hearing in the case of Mr Katanga and Mr Ngudjolo will begin in a few days, on 27 June. With this case, the OTP completed a first phase of the DRC investigation, focusing on the horrific crimes committed by leaders of armed groups active in Ituri since July 2002.

The Office is now moving on to a third case in the DRC. In the selection process, the OTP is paying particular attention to the numerous reports of crimes committed by a multiplicity of perpetrators and groups in the North and South Kivu provinces, including numerous reports on horrific sexual crimes. The OTP received the views and concerns of victims and associations in this regard at the seat of the Court on 13 March 2008.

Given the particular characteristics of those attacks, the Office will also consider ways to facilitate investigations by the DRC judiciary and contributions to "dossiers d'instruction" against perpetrators. This will require enhanced protection for witnesses and the judiciary.

The OTP is also monitoring the situation of those individuals who may have played a role in supporting and backing armed groups which committed crimes under the jurisdiction of the Court.

DRC is a situation where the political support of states is concretely needed.

The Situation in Northern Uganda

The arrest warrants against Joseph Kony and other LRA commanders, the first issued by the Court, have been outstanding since 2005. They have committed unspeakable atrocities and we believe that they are criminally responsible for thousands of killings and abductions since July 2002. They are charged with crimes against humanity and war crimes, including rape, murder, sexual enslavement, enlisting of children, attacking civilian populations, and pillaging. Those arrest warrants remain in effect and have to be executed.

Joseph Kony, the first indictee of the ICC, has received money and food, resources that he has used to enlarge and strengthen his group. He has committed new crimes in DRC, Southern Sudan and CAR.

Joseph Kony and two remaining commanders of the Lord Resistance's Army are fugitives from the ICC. They continue to plan and commit crimes. They abduct civilians, including children, for the purposes of forced recruitment and sexual enslavement. My Office has confirmed that 200 to 300 civilians have recently been abducted by the LRA in these three countries. These are the same crimes which the LRA leaders are charged with in Northern Uganda. They are now inflicting the same violence on a new generation of victims.

Let me be transparent. As the Deputy Prosecutor of a Court which has issued arrest warrants against the LRA leaders 3 years ago, I regret the halting of any effort to promote arrests of those indicted criminals during the Juba process, the absence of any EU statement calling for the arrest of those criminals, and the absence of clear efforts to avoid the diversion of international aid in favour of the LRA. This has allowed Joseph Kony to divert money from the Juba talks, in order to re-arm, and commit new crimes. We are aware of the difficulties of an arrest operation. This is why the Office has consistently requested that such an operation be prepared by cutting off the supply networks of Joseph Kony, encouraging defections and stepping up planning of the arrest. The choice was never between an arrest operation or nothing.

The international community has to conduct conflict management initiatives. We have to respect the facts and the law.

Joseph Kony might be proved innocent in a Court of law. But it is not the role of a peace mediator, or of the Security Council, to decide whether Mr Kony will end up in a jail in Scheveningen, in jail in Kampala, or in golden exile. It is not for politicians to decide who is a criminal deserving arrest and who does not. It is not for politicians to decide when a State is conducting genuine proceedings or not. It is the Court's responsibility.

The Situation in the Central African Republic (CAR)

On 22 May 2007 we announced the opening of an investigation in the Central African Republic.

The OTP's investigation is focusing on the most serious crimes, which were mainly committed during a peak of violence in 2002-2003 and with a particularly high number of allegations of rapes

and other acts of sexual violence, perpetrated against hundreds of reported victims.

On 24 May 2008, Mr. Jean-Pierre Bemba, Chairman of the *Mouvement de Libération du Congo* (MLC), an armed group which intervened in the 2002-2003 armed conflict in Central African Republic (CAR), was arrested in the suburbs of Brussels. We expect him to be transferred to The Hague shortly.

Mr. Bemba was charged by the ICC for crimes against humanity and war crimes committed in Central African Republic. The MLC pursued a plan of terrorizing and brutalizing innocent civilians, in particular during a campaign of massive rapes and looting. Mr Bemba had already used the same tactics in the past, in CAR and in the DRC, always leaving a trail of death and destruction behind him.

In CAR, our investigation into the 2002-03 crimes continues. We are also monitoring recent crimes. The Prosecutor has written to CAR authorities inquiring about national proceedings against the main perpetrators of crimes committed since 2005.

We welcome the efficient approach taken in the context of the national dialogue in CAR, where transparency has been given to all participants that no immunity can be granted for crimes within the jurisdiction of the Court. This is helping the Court, and the CAR.

The Situation in Darfur, the Sudan

On 27 April 2007, more than one year ago, the ICC Judges issued arrest warrants for Ahmad Harun former Minister of State for the Interior and current State Minister of Humanitarian Affairs, and Ali Kushayb, a Militia/Janjaweed leader, for war crimes and crimes against humanity.

Just three weeks ago, on 5 June, the Prosecutor informed the Security Council that the Government of Sudan continues not to cooperate with the Court. The Government of Sudan is not complying with Security Council Resolution 1593, referring the Darfur situation to the ICC. The territorial State, Sudan, has the legal obligation and the ability to arrest Mr. Harun and Mr. Kushyab and surrender them to the Court. The Sudanese authorities can – and they must – surrender the two indicted criminals to the Court, and break the system of violence and impunity in Darfur.

The Prosecutor also reported on the Office's ongoing second and third investigations in Darfur. The mobilization of the state apparatus to plan, commit and cover up crimes against civilians, in particular the Fur, Massalit and Zaghawa, in such a systematic way, over such a region, over such a period of time, is the focus of the Office's second investigation.

Furthermore, the investigation into allegations of rebel crimes, focusing amongst others on the Haskanita attack against peacekeepers, continues.

2. – Let me now turn to our analysis activities.

Based on Article 15, the Office proactively collects information about alleged crimes falling under the Court's jurisdiction. The Office continues its analysis of various situations in the preliminary examination phase. As part of its ongoing analysis of the situation in Colombia, the Office has written to the Government of Colombia seeking further information. We also had fruitful exchanges in Washington with the Secretary General of the OAS on how our justice efforts and other initiatives are reinforcing not undermining each other.

The Office has also written to various parties in Kenya seeking further information in relation to alleged crimes committed on that territory, including to the two parties which now constitute the Government. The Office has received a reply from the Kenyan National Commission on Human Rights but still awaits a reply from either of the two political parties concerned.

The Office has also recently written to the Government of Afghanistan seeking further information in relation to alleged crimes committed on that territory.

In relation to Côte d'Ivoire, the Prosecutor met with the Ambassador after the last diplomatic briefing and the Office's outstanding request to carry out a mission to that territory was discussed. We regret that no progress has been made in this regard. We call upon the government of Côte d'Ivoire to facilitate this mission as a matter of urgency.

Conclusion

As a Prosecutor, I am confident that the judicial activities of the Court will proceed efficiently ; as

demonstrated recently, the defendants will be treated fairly, the Prosecutor's action scrutinized energetically, the victims will have their own, dignified, autonomous voice.

The most difficult challenge might well be outside the courtroom. The arrests of Ngudjolo and even more Bemba have demonstrated the potentiality of the system. The UNSC PRST was also an important moment.

By virtue of the Rome Statute, each State Party must support the Court wherever and whenever it decides to intervene or not to intervene, to support the Court whether it decides to indict, convict or acquit.

It is time for States to transform their expression of support to the idea of international justice into concrete cooperation. Impunity is not an abstract notion. Impunity fuels violence. Continuation of violence and crimes is what happens in situation, like that of Joseph Kony and other LRA leaders, where States Parties of the ICC are not facing their responsibilities, and still continue to refuse to call publicly for arrests.

It is not enough to call generally and theoretically for compliance with the Rome Statute. Efforts to arrest must be ongoing and unrelenting. In Uganda, in the DRC, in CAR. It is not true only for the territorial states. The whole international community should mobilize themselves to support the effort of territorial states.

Your Excellencies, Ladies and Gentlemen,
You cannot remain silent on Kony and hope that what you say on Harun can carry weight. I ask you for consistency.

Thank you.

Appendix L: 14th diplomatic briefing

Cour
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Fourteenth Diplomatic Briefing of the International Criminal Court
Quatorzième réunion d'information de la Cour pénale internationale à l'intention du corps diplomatique

Compilation of Statements
Recueil de déclarations

Check Against Delivery

The Hague, 8 October 2008
La Haye, 8 octobre 2008

Luis Moreno-Ocampo, Prosecutor/Le Procureur

Excellencies, Ladies and Gentlemen,

Let me report on the last developments of the Office of the Prosecutor's ("OTP") activities.

a. *Uganda*

The Office confirmed that Vincent Otti was killed by the Lord's Resistance Army ("LRA"), following orders by Joseph Kony. The Prosecution provided the information to the Pre-Trial Chamber. Joseph Kony and the other two LRA commanders charged with crimes against humanity and war crimes committed in Northern Uganda remain at large. They continue to commit crimes and to threaten the entire region. Arrest is long overdue.

It is confirmed that Kony used the Juba peace talks to gain time and support, to rearm and attack again. We have collected information indicating that at the end of 2007, Joseph Kony issued orders to abduct 1,000 persons to expand the ranks of the LRA. The price paid today by civilians is high. The LRA is attacking civilians in Southern Sudan and in the Central African Republic ("CAR"), and is now also committing atrocities in the Democratic Republic of the Congo ("DRC").

Reports indicate that just a few days ago, on 17 September 2008, the LRA attacked Congolese villages in the Haut Uelé District of the DRC (Dungu Territory). These attacks all follow a similar method, with markets surrounded and looted, students abducted from school, properties burned and dozens of civilians killed, including several local chiefs. Tens of thousands have now been displaced.

We appreciated the efforts of States to monitor assistance and resources provided to the LRA in the context of the Juba talks. We are also working well with national authorities to control the LRA supply network in Europe and elsewhere. The Prosecution urges all actors, including regional and international organizations, to support and work together with the DRC, CAR, Southern Sudan, Uganda and the United Nations Mission in the Democratic Republic of the Congo ("MONUC") in the planning and execution of the arrests.

b. *Central African Republic*

The Prosecution presented the document containing the charges in the case of Mr. Jean- Pierre Bemba on 1st of October. The same day, the Prosecution disclosed incriminatory and exculpatory evidence to the defence. In the CAR collection, there is just one document containing information with some exculpatory value received under the confidential regime established by Article 54(3)(e). The Office is working to disclose the information to the defence. The Office, in close consultation with the Victims and Witnesses Unit ("VWU") and the Pre-Trial Chamber III, is working on witness protection issues. The Prosecution is ready for the start of the Confirmation of Charges Hearing on 4 November.

c. *The Democratic Republic of the Congo - 1*

As you know, on 13 June 2008, the Trial Chamber imposed a stay of the proceedings in the case of the *Prosecutor against Mr. Thomas Lubanga Dyilo*. The Chamber took that step because the Prosecution was not able to put all relevant material received under conditions of confidentiality but with eventual exculpatory value before the Trial Chamber, in order for it to assess the impact of any non-disclosure on the fairness of the proceedings.

The Office appealed this decision based on a different interpretation of the law, but at the same time the Office is dedicating its utmost efforts to reach an agreement with the information providers in order to comply with the Judges' request.

The OTP has addressed the concerns that led to the original stay. The Prosecution has provided to the Trial Chamber all undisclosed evidence from Non Governmental Organizations ("NGOs") in an unredacted form, and has informed the Chamber that it was in a position to immediately provide all the United Nations ("UN") documents that form part of the undisclosed evidence to the Trial Chamber, thanks to a new agreement it has reached with the UN. Accordingly, the Prosecution asked the Chamber to lift the stay and review the documents.

On 3 September 2008, the Trial Chamber refused to review the documents and lift the stay of the proceedings. It accepted that the Prosecution is now in compliance with the original requirement, but added new conditions.

The Office also appealed this new decision. The Appeals Chamber has to rule on these legal aspects.

In the meantime, the Prosecution went back to the UN, and we reached last week a new agreement with the Office of Legal Adviser of the UN in order to meet the new requirements established by the Trial Chamber. The UN has been consistently supporting the Court and we found a solution that preserves its legitimate concerns for the security of its personnel and still meets the requirements of the Trial Chamber.

The Prosecution is focusing on starting the Lubanga trial. We are litigating the issues, but we are also finding operational solutions that will be presented to the Judges in a few days.

Let me also highlight that the arrest warrant against Mr. Bosco Ntaganda is still outstanding. We are seeking the support of all actors in the Kivus, the DRC and the region to secure his arrest.

d. *The Democratic Republic of the Congo - 2*

As the President said, the Pre-Trial Chamber I confirmed the charges, and we are preparing for trial. The work of the Office is of course affected by the security situation on the ground. Today, the *Forces de Résistance Patriotique d'Ituri* ("FRPI") forces are attacking Bogoro again. and MONUC is trying to stop them. All actors involved must find ways to support MONUC in this regard.

e. *The Democratic Republic of the Congo - 3*

The Office is now moving on to a third case in the DRC, in the North and South Kivu provinces, where we have received numerous reports of crimes committed by a multiplicity of perpetrators and groups, including numerous reports on sexual crimes. We are currently engaging all actors to secure their support.

Given the particular characteristics of those attacks, the Office will also consider ways to facilitate investigations by the DRC judiciary and contributions to "*dossiers d'instruction*" against perpetrators. This will require enhanced protection for witnesses and the judiciary.

f. *Darfur, the Sudan*

The two individuals sought by the Court, Mr. Ahmed Harun and Mr. Ali Kushayb, remain at large. The Government of the Sudan continues to refuse to cooperate with the Court and to comply with UN Security Council ("UNSC") Resolution 1593 (2005). Following my presentation of the 5 June report to the Council, on 16 June, the UN Security Council unanimously adopted Presidential Statement 21, which states that the Security Council takes note of the OTP's efforts to bring to justice the perpetrators of war crimes and crimes against humanity in Darfur, in particular the arrest warrants for Ahmad Harun and Ali Kushayb and urges the Government of the Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court, consistent with Resolution 1593 (2005), in order to put an end to impunity for the crimes committed in Darfur.

On 14 July, The Prosecution requested to the Pre Trial Chamber I an arrest warrant against Mr. Al Bashir for genocide, crimes against humanity and war crimes. The evidence shows that Al Bashir's forces attacked the civilian population in Darfur since March 2003. First they were attacked in their villages, and now they are attacked in the camps for displaced persons.

Additionally, my Office requested information from the Sudanese government regarding the Kalma Camp attack committed on 25 August, where Sudanese forces allegedly killed at least 31 civilians. We are assessing if this was an isolated act or a new strategy: open attacks against civilians in camps for displaced persons in Darfur.

Finally, we have proceeded with the investigation into allegations of rebel crimes, focusing on the Haskanita attack against AU peacekeepers. We are now ready to proceed to the Judges with an application in the third investigation before the end of 2008.

Instead of addressing this issue judicially, Mr. Al Bashir is using the Sudanese state apparatus to challenge the case through political, diplomatic, and communication channels. They have organized a campaign with four main points: i. the Court is attacking Africa; ii. the Court is affecting the peace process; iii. the Court is affecting the security of victims and of the international personnel, because if indicted, Mr. Al Bashir would retaliate against them; iv. there is no evidence, and the case is a personal issue of the Prosecutor against Mr. Al Bashir.

On the first point, we cannot accept this attempt to divert our attention from the crimes. As UN Secretary-General Ban Ki-Moon said: this is not about Africa, this is about Darfur. The victims of the crimes committed in Darfur are almost 3 millions of African citizens. The evidence shows that Mr. Al Bashir used some tribes, that he labelled "Arabs", to attack other tribes, that he called "Zurgas" or "Africans". During the attacks, Al Bashir's forces consistently claimed that they were going to kill the "Africans". Who is attacking Africans in Darfur is very clear. The public campaign that has been launched is part of an attempt to cover-up those crimes and to divert our attention. All of us have a responsibility to set the record straight, and I count on your support.

On the second point, the idea that justice will promote peace in Darfur is both a cornerstone of the Rome Statute and a decision taken by the Security Council in March 2005. The support of all the members of the UNSC to this approach has been confirmed by the Presidential Statement of the Council in June 2008. The situation has not changed, and again all of us have a responsibility to clarify this. The Court has been given a judicial mandate, and must implement it.

On the third point, the mere fact that Mr. Al Bashir is threatening the victims, African Union ("AU") and UN personnel, should be seen for what it is: the confirmation of his criminal intent. The Court and the States Parties cannot be blackmailed. Again, I need your very strong voices to make clear that such threats will not be rewarded with promises of impunity.

On the fourth point, I will deal with this in Court. I will present my evidence and the judges will assess. As you know, the judges held a first hearing on 1st of October.
Ladies and Gentlemen,

We have a judicial mandate. We are doing our part, but we also need your voices to confirm the legitimacy of the Court you have created in the state of political attacks that this Court, alone, cannot confront.

Let me now turn to our analysis activities.

On 18 June 2008 my Office wrote to the Government of Colombia seeking further information on the decision to extradite senior former paramilitary leaders to the United States of America. We also sent a number of requests to neighbouring states and European states to

gather more information on possible support to the commission of crimes by the FARC; we want to identify the existence of national proceedings in this regard in different countries.

As part of our ongoing analysis of the situation in Colombia, I led a mission to Colombia, from 25 to 27 August 2008. The Prosecution delegation met with victims, participated in a Seminar supported by the Netherlands for Judges and Prosecutors that are applying the "Law on Peace and Justice". We had a meeting with a plenary of the Supreme Court of Justice. We met with the "Procurador General", who provided with useful information on the ongoing investigations. We visited a mass grave exhumation that is part of the national investigations against the paramilitary activities. We received explanations from all the levels of the Government. We met with the President, the Vice President and different ministers. We also met with representatives of civil society.

The Office awaits a reply to a request sent to the Government of Afghanistan seeking further information in relation to alleged crimes committed on that territory.

As I confirmed on 20 August 2008, my Office is analysing the situation in Georgia. The Office is currently analysing open sources documents as well as reports from Georgia and over 3,000 documents received from the Russian Government. We received the visit of officials of the Georgian government. My Office is continuing to gather more information in order to determine whether there is a reasonable basis to proceed with an investigation.

As the President said we are celebrating ten years of the Rome Treaty. The law is now operational. It is time to confirm in reality our commitment to put an end to impunity for the most serious crimes of concern to the international community.

Thank you.

Following a question on the AU statement on support of a delay in the investigation in Darfur, the Prosecutor answered:

The Prosecution cannot speculate on current or forthcoming peace efforts, as these efforts, pursued in parallel by other members of the international community, are outside the judicial remit of the Office of the Prosecutor. The interests of peace are the responsibility of other organs, *inter alia* the UNSC or regional organizations. The Council recognized through the adoption

of 1593 that justice is an essential component to the solution for Darfur, and that lack of justice for Rome Statute crimes in Darfur poses a threat to international peace and security. The UN Security Council had full knowledge of the OTP's plans, and following on their referral of the situation in 2005 and the presentation of seven reports to the Council on the progress of the Prosecution's work, unanimously expressed their support for the OTP's work in June 2008.

My Office continues to update the Arab League, the African Union and institutions and leaders seeking for comprehensive solutions in Darfur on the Court's judicial developments. In New York, two weeks ago, I met with Sheikh Al Thani, Qatar's Prime Minister and Minister of Foreign Affairs, Mr. Jean Ping, Chairperson of the African Union Commission and Mr. Bernard Bembe, the Minister of Foreign Affairs of Tanzania. I was also invited to attend the first consultations of the Arab Ministerial Committee set- up by the Arab League to arrange peace talks between the Government of the Sudan and the armed movements in Darfur, chaired by Qatar's Prime Minister and Minister of Foreign Affairs, Sheikh Al Thani, and co-chaired by the Secretary General of the Arab League, Mr. Amr Mussa and Mr. Jean Ping. The Committee meeting was also attended by the Ministers of Foreign Affairs of Syria, Saudi Arabia, Egypt, Libya, Algeria and Morocco, as well as by the Tanzanian, Senegalese and Burkinabe Foreign ministers. The Prosecution respects the complementary role they are seeking to play in bringing a comprehensive solution to Darfur.

On 11 July, Deputy Prosecutor Fatou Bensouda briefed the AU Peace and Security Council in Addis Ababa, and met with the AU Commission Chairperson, Mr. Jean Ping.

On 9-10 August 2008, Deputy Prosecutor Fatou Bensouda met in Botswana with President Festus Mogae and Attorney General Athalia Molokomme as well as the Ministers responsible for Justice, Defence and Security. Deputy Prosecutor Bensouda also spoke with President Sirleaf Johnson of Liberia.

On 10-11 August 2008, I conducted an official visit to Dakar, where I met with President Wade and discussed in particular the case of Darfur. The support of President Wade and His Minister for Foreign Affairs Mr. Cheikh Gadjo has been valuable.

While in New York, I also met with the Ministers of Foreign Affairs of Sierra Leone, the Ministers of Justice of Rwanda and Kenya, and the outgoing and incoming Presidents of the Assembly of States Parties ("ASP").

Appendix M: 15th diplomatic briefing

Cour
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Fifteenth Diplomatic Briefing of the International Criminal Court

Compilation of Statements

The Hague, 7 April 2009

Fatou Bensouda, Deputy Prosecutor

Excellencies, Ladies and Gentlemen, Thank you for being here.

Today, 7 April, is the day of Remembrance of the Rwanda Genocide. It has been 15 years since the killings started and the unthinkable happened, again. It is a solemn reminder of the responsibility of States Parties to the Rome Statute. It is a call for action to arrest Bosco Ntaganda, Joseph Kony, Ahmed Harun and Omar Al-Bashir, as well as to stop the massive crimes that they are still committing.

Let me update you on the Office activities since our last meeting.

The Democratic Republic of the Congo (DRC)

It has been 5 years since President Kabila referred the situation of the DRC to the International Criminal Court, and international justice has become an integral part of the efforts for peace and reconciliation in the Great Lakes region.

In **DRC 1**, *Prosecutor versus Thomas Lubanga Dyilo*, the Trial Chamber has examined 16 Prosecution witnesses. This includes former child soldiers, political, military and other insiders, as well as experts. We have presented documentary evidence, including videos, and documents from the UPC. In the next weeks, we will hear around 20 prosecution witnesses. We expect the Prosecution case to be completed by June 2009. The Defence has announced that they will call witnesses; in principle, they will appear in September.

These 11 weeks of trial have confirmed the existence of two main challenges for the whole Court: the need to ensure the protection and the proper conditions for vulnerable witnesses coming from situation countries, where tensions still remain. We still have concerns in this regard and we will address it with the Registry and Chambers.

In the **DRC 2** case, we are ready to go to trial. The beginning of the trial is scheduled for 24 September.

We are trying to present each prosecution case in less than six months. We will present about 25

witnesses in the Katanga/Ngudjolo case.

As you know, we still have one suspect at large in DRC, Bosco Ntaganda. He has been active in the Kivus as Chief of staff of the CNDP. Bosco seems to have taken over the leadership of the group when Nkunda was arrested by Rwanda. The DRC Government is conscious of its obligations under the Rome Statute and we are in discussion with them and all partners in the region in order to ensure that Bosco is surrendered soon.

Our third investigation in the DRC continues, with a focus on the Kivu provinces. We are working on all the groups active in the region, but for operational reasons cannot disclose much information at this stage. In this **DRC 3** case, we are aiming at a coordinated approach whereby national judicial authorities in the region and beyond as appropriate will take over cases in order to ensure that all perpetrators are prosecuted. The possibility for us to transfer information collected in the course of our investigations will depend on the development locally of protection for witnesses and judges.

Let me turn to **Northern Uganda**

President Museveni referred the case to us 5 years ago. The Court has done its job, issuing arrest warrants as early as 2005. But arrests have not been prioritized by the international community. Negotiations have allowed the LRA to re-build and re-arm.

LRA crimes against civilians have resumed with the same cruelty and across a growing area in Northern DRC, Southern Sudan and close to CAR.

The joint operation by regional states that we witnessed is recognition of the need for action. The fact that the Governments of the region acted together, with the objective of executing a warrant, is an encouraging signal.

The capture of high level commanders, and information gathered on supply networks should help continue the work against the LRA. Our understanding is that the Ugandans will continue to assist DRC counterparts.

Outstanding arrest warrants have to be executed.

As President Song mentioned, on 10 March, PTC II ruled that the Uganda case is admissible. It is important that the three indictees, as soon as they are arrested, are transferred to The Hague. I insist once more that work in Uganda to build up accountability mechanisms must focus on the other LRA combatants, who are not sought by the Court. I strongly discourage States Parties to encourage Court shopping for the three indicted LRA leaders.

Let me now turn to **the Central African Republic,** a situation referred to us in 2004 by President Bozize.

As the President mentioned, Jean-Pierre Bemba's confirmation hearing took place on 12-15 January 2009.

On 3rd March, the PTC requested the Prosecution to consider submitting an Amended Document Containing the Charges, addressing Article 28 of the Statute on command/superior responsibility. We did so on 30 March 2009. The initial mode of liability under Article 25(3)(a) for individual criminal responsibility has not been dropped. Both modes of liability are submitted as alternatives. The evidence supports both forms of liability.

In the meantime, the investigation goes on: We have performed forensic activities in Bangui (exhumation and autopsy) and are grateful for the cooperation extended by the Central African authorities and a number of partners. During our last diplomatic briefing, the CAR Minister of Justice was with us and committed to such cooperation; it has been forthcoming.

Let me turn to **the situation in Darfur, the Sudan**

The OTP presented a third case in November 2008, regarding the alleged responsibility of 3 rebel commanders for crimes committed against AU peacekeepers in Haskanita on 29 September 2007. We hope to have a decision from the Judges this month. Different rebels groups publicly committed to ensure the appearance of potential suspects in Court. Should the Judges rule in favour of our request, judicial proceedings could start soon.

A month ago, the ICC decided that Omar Al-Bashir shall be arrested to stand trial for crimes of

rapes, extermination and killings committed against millions of civilians in Darfur.

The Sudan is obliged under international law to execute the warrant on its territory. If it does not enforce the warrant, the United Nations Security Council, which referred the case to the ICC, will need to ensure compliance.

In order to prevent future crimes in Darfur, to avoid thousands of deaths next month, we must act now. After the Court's decision, Omar Al-Bashir expelled humanitarian organisations. This is not just an aggravation of the humanitarian crisis. The expulsion of aid workers is another step in the commission of the crime of extermination.

In accordance with the Rome Statute, States Parties have to guarantee lasting respect for and enforcement of international justice. States should implement a consistent diplomatic campaign to support the Court's decision and to deny Omar Al-Bashir any form of support. The Office of the Prosecutor wishes to consult with States Parties on possible initiatives in this regard and possibly request your assistance:

Non-essential contacts with Omar Al-Bashir should be severed. When contacts are necessary, attempts should be made first to interact with non-indicted individuals; there are at this time only three persons sought by the Court: Ali Kushayb, Ahmed Harun and Omar Al-Bashir.

In bilateral and multilateral meetings, States Parties should proactively express their support to the enforcement of the Court's decision, request cooperation with the Court in accordance with Security Council resolution 1593, and demand that attacks against the displaced, including through expelling humanitarians, cease immediately. The Office is grateful for initiatives already taken by some States in this regard.

There can be no "business as usual" attitude regarding the warrant. Strong leadership is required. The kind of leadership we have found in the Great Lakes Region. There, African heads of States have chosen the path of justice and called upon the ICC to help them. National leaders as well as regional and international organisations are working together, integrating the tracks of justice, humanitarian assistance, peace and security. There is still a long way to go. But they have said no to massive crimes. This is the way forward. And this is not happening for Darfur. Why?

As a Deputy Prosecutor, and as an African woman, I am dismayed by suggestions that this Court is targeting Africans. This Court has indicted the President of the Sudan because he pursues the extermination of 2.5 million Africans.

This Court, in liaison with the African Union and the Arab League, two organisations publicly committed to fighting impunity, has examined for years whether the Sudanese authorities have investigated and prosecuted the massive crimes committed in Darfur. They have done nothing. Worse, they have condoned the rape of women and girls for five years, African women, African girls. This Court is defending African victims and will continue to do so.

Former President Mbeki of South Africa, as the leader of the AU panel, is in contact with Prosecutor Moreno-Ocampo. We explained to him that the ICC has conducted investigations against six individuals, including the three rebel commanders. There are no sealed arrest warrants and the Court is not conducting new investigations. President Mbeki has the huge task of moving the process of accountability ahead for all the other individuals involved in the commission of crimes. We are committed to working with him.

Let me now turn to **other situations**

Situations in five countries on four continents are under analysis: Colombia, Georgia, Kenya, Côte d'Ivoire, and Afghanistan.

On 30-31 March, upon the invitation of former Secretary General Kofi Annan, the Office participated in the Geneva Conference on Kenya with government representatives, as well as members of the civil society. The leadership of Kofi Annan is essential. We fully support his efforts to encourage local accountability mechanisms. We stand ready to assist Kenya.

On 22 January 2009, the Palestinian National Authority lodged a declaration accepting jurisdiction of the Court in accordance with Article 12(3). The OTP has also received 326 communications related to the situation of Israel and the Palestinian Territory. The Office will examine all issues related to its jurisdiction, including whether the declaration by the Palestinian Authority accepting the exercise of jurisdiction by the ICC meets statutory requirements, whether crimes within ICC jurisdiction have been committed and whether there are national proceedings in

relation to alleged crimes.

Before I conclude, let me appraise you of **developments in the area of positive complementarity**

Next to its existing cooperation networks, the Office has developed a network with law enforcement agencies. After three meetings to exchange experience with war crime units from around the world, the Office has started a project with interested countries and INTERPOL to increase our mutual cooperation. From mid February to March 2009, investigators and prosecutors from 8 different countries including, among others, the *Premier Substitut du Procureur de la République Centrafricaine à Bangui* stayed in the Office, exchanging experiences and practices.

The Rome Statute created more than a Court in far away Den Haag. It established an innovative model of international cooperation. We, together with national police institutions, and together with national judiciary, will do the investigative and prosecutorial work. We need you, the diplomatic community, to ensure that justice is respected and arrest warrants are implement

Appendix N: 16th diplomatic briefing

Cour
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International
Criminal
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Mrs Fatou Bensouda
Deputy Prosecutor of the International Criminal Court

Sixteenth Diplomatic Briefing

Statement

Brussels, 26 May 2009

English Version

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Excellencies, Ladies and Gentlemen,

Thank you for being here.

As the Vice-President mentioned, just a week ago, on 18 May, the ICC held its first initial appearance hearing for a suspect in the Darfur situation.

Mr. Abu Garda's appearance in Court would not have been possible without the assistance of a number of African and European States, who worked together with the Office of the Prosecutor over the last 8 months, including The Netherlands, the Host State of the ICC, Chad, Senegal, Nigeria, Mali and the Gambia. I wish to thank them again.

Ladies and Gentlemen, Let me update you on the other Office activities since our last meeting.

The Democratic Republic of the Congo (DRC)

In **DRC 1**, *Prosecutor versus Thomas Lubanga Dyilo*, the Trial Chamber has examined 22 Prosecution witnesses. This includes former child soldiers, political, military and other insiders, as well as experts. We have presented documentary evidence, including videos, and documents from the UPC. We expect the Prosecution case to be completed by June 2009.

In the **DRC 2** case, we are ready to go to trial. The beginning of the trial is scheduled for 24 September. We are trying to present each prosecution case in less than six months. We will present about 25 witnesses in the Katanga/Ngudjolo case.

As you know, we still have one suspect at large in DRC, Bosco Ntaganda. He has been active in the Kivus as Chief of staff of the CNDP. Bosco seems to have taken over the leadership of the group when Nkunda was arrested by Rwanda. The DRC Government is conscious of its obligations under the Rome Statute and we are in discussion with them and all partners in the region in order to ensure that Bosco is surrendered soon.

Our third investigation in the DRC continues, with a focus on the Kivu provinces. We are working on all the groups active in the region, but for operational reasons cannot disclose much information at this stage. In this **DRC 3** case, we are aiming at a coordinated approach whereby

national judicial authorities in the region and beyond as appropriate will take over cases in order to ensure that all perpetrators are prosecuted. The possibility for us to transfer information collected in the course of our investigations will depend on the development locally of protection for witnesses and judges.

Let me turn to **Northern Uganda**

LRA crimes against civilians have resumed with the same cruelty and across a growing area in Northern DRC and Southern Sudan.

It is almost 4 years since the ICC warrants were issued. LRA killings and abductions continue under Kony's leadership, with more than 100,000 now displaced by LRA activity in DRC, and over 50,000 in Southern Sudan, including over 18,000 displaced across the border from DRC, according to UN OCHA estimates.

The joint operation by regional states that we witnessed is recognition of the need for action. The fact that the Governments of the region acted together, with the objective of executing a warrant, is an encouraging signal.

The capture of high level commanders, and information gathered on supply networks should help continue the work against the LRA. Our understanding is that the Ugandans will continue to assist DRC counterparts.

Outstanding arrest warrants have to be executed.

Let me now turn to **the Central African Republic,** a situation referred to us in 2004 by President Bozize.

On 3rd March, the PTC requested the Prosecution to consider submitting an Amended Document Containing the Charges, addressing Article 28 of the Statute on command/superior responsibility. We submitted the amended document on 30 March 2009, with both modes of liability (command/superior responsibility and individual criminal responsibility under Article 25(3)(a)) as alternatives. The evidence supports both forms of liability. We expect the Chamber to issue its decision by the end of June.

In the meantime, the investigation goes on: We have performed forensic activities in Bangui (exhumation and autopsy) and are grateful for the cooperation extended by the Central African authorities and a number of partners.

Let me turn to **the situation in Darfur, the Sudan**

As I mentioned earlier, Bahar Idriss Abu Garda voluntarily appeared in Court on 18 May in response to a summons.

The rebel commander is the first person to appear before the Court voluntarily in response to a summons and the first person to appear in relation to the Darfur investigation opened in June 2005.

As the Prosecutor stated, "*voluntary appearance is always an option under the Statute, including for President Al Bashir should he elect to cooperate*."

The initial appearance of Mr. Abu Garda was also an occasion to pay tribute to the peacekeepers targeted in Haskanita: "*By killing peacekeepers, the perpetrators attacked the millions of civilians who those soldiers came to protect. They came from Senegal, from Mali, from Nigeria, from Botswana, to serve and protect. They were murdered. Attacking peacekeepers is a serious crime under the Statute and shall be prosecuted*."

Regarding our case against President Omar Al Bashir, the Sudan is obliged under international law to execute the warrant on its territory. If it does not enforce the warrant, the United Nations Security Council, which referred the case to the ICC, will need to ensure compliance. The Prosecutor will report on the non-cooperation of the Sudan to the UNSC on 5 June.

The Prosecutor is also in regular contact with President Mbeki, as the leader of the AU high-level panel. President Mbeki has written to offer dialogue and cooperation. The Office recognizes the importance of a comprehensive solution for Darfur, including reconciliation and compensation, as well as moving ahead the process of accountability for other individuals involved in the commission of crimes. The Office of the Prosecutor is committed to working with President Mbeki and the AU panel toward these goals.

Non-essential contacts with Omar Al-Bashir should be severed. When contacts are necessary, attempts should be made first to interact with non-indicted individuals; there are at this time only three persons sought by the Court: Ali Kushayb, Ahmed Harun and Omar Al-Bashir.

In bilateral and multilateral meetings, States Parties should proactively express their support to the enforcement of the Court's decision, request cooperation with the Court in accordance with Security Council resolution 1593, and demand that attacks against the displaced, including through expelling humanitarians, cease immediately. The Office is grateful for initiatives already taken by some States in this regard.

Let me now turn to **other situations**

Situations in five countries on four continents are under analysis: Colombia, Georgia, Kenya, Côte d'Ivoire, and Afghanistan.

On 30-31 March, upon the invitation of former Secretary General Kofi Annan, the Office participated in the Geneva Conference on Kenya with government representatives, as well as members of the civil society. The leadership of Kofi Annan is essential. We fully support his efforts to encourage local accountability mechanisms. We stand ready to assist Kenya.

On 22 January 2009, the Palestinian National Authority lodged a declaration accepting jurisdiction of the Court in accordance with Article 12(3). The OTP has also received 326 communications related to the situation of Israel and the Palestinian Territory. The Office continues to examine all issues related to its jurisdiction, including whether the declaration by the Palestinian Authority accepting the exercise of jurisdiction by the ICC meets statutory requirements, whether crimes within ICC jurisdiction have been committed and whether there are national proceedings in relation to alleged crimes. We have received important contributions to our analysis, including a report sent by the Prosecutor by the Secretary-General of the Arab League, Mr. Amr Musa.

Before I conclude, let me say a few words about **positive complementarity** and its importance in terms of enforcing the mandate of the Court and maximizing the impact of our work.

A positive understanding of complementarity means firstly making sure that the Court is taken

seriously as an enforcer of the Statute. After six years, the international community recognizes the existence of a new global legal framework, and realizes that it has to act. This means for instance implementing the provisions of the Rome Statute into national legislations.

Secondly, the Office has developed the practice of being as transparent as possible so the international community and our partners will know whether there are situations which may require investigations to be carried out.

A third manner in which the Office can act is to use its access and expertise to help broker certain forms of assistance to national prosecutions and judicial authorities.

The fourth way that the Office can act is to provide information to national authorities that have been obtained in the course of its investigations. The Office is willing to do so, with the important caveat that any such information will only ever be transmitted if the Office is satisfied that the security of witnesses and the independence of the judiciary can be adequately addressed and guaranteed.

Thus we, together with national police institutions, and together with national judiciary, will do the investigative and prosecutorial work. We need you, the diplomatic community, to ensure that justice is respected and arrest warrants are implemented.

Appendix O: 17th diplomatic briefing

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

Seventeenth Diplomatic Briefing

Statement

The Hague, 4 November 2009

English Version

Check upon Delivery

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Excellencies, Ladies and Gentlemen,

As the President said, States have the opportunity to transform the Kampala Review Conference into a major milestone. The next Assembly will be a great moment for you to finalize your plans and exercise your collective responsibilities.

How to do it is of course the responsibility of States. As the President said, it would be improper for the Court to take any position on amendments to be decided by States. As the Prosecutor, my Office's contribution is a public Prosecutorial Strategy and a report on the activities of the last three years that you will receive before the end of the year, taking in consideration the consultation process conducted, including meetings in New York, The Hague and yesterday in Geneva. The Prosecution is presenting its own plans in order to increase predictability and to help stakeholders to produce their own plans. Our Prosecutorial Strategy is our independent contribution to the Court Strategic plan. It focuses on our activities but also present areas where we can work together.

Let me now quickly update you on the **Prosecution activities:**

The Democratic Republic of the Congo (DRC)

In **DRC 1**, *Prosecutor versus Thomas Lubanga Dyilo*, we concluded the presentation of our evidence and we are now waiting for the Appeal Chamber to make a decision. The issue is if Judges can include new facts at this stage of the proceedings based on Regulation 55(2).

In the **DRC 2** case, we are ready to go to trial. A few days ago, Mathieu Ngudjolo's Defence requested a postponement of three months to the beginning of the trial. This is under the consideration of the Judges.

Central African Republic

As you know, we appealed the decision ordering interim release of Jean-Pierre Bemba. We understand the concerns or the States. The Prosecution's position is based on the facts: there has been no change of factual circumstances in the case. Most of the circumstances cited

by the decision are pre-existing and have been cited previously by the same judge as either grounds for continued detention or irrelevant to an application for release.

On 3 September, the Appeals Chamber decided to grant suspensive effect to the Prosecutor's Appeal.

On 4 September, Pre-Trial Chamber II decided to postpone the hearings with States on Mr. Bemba's conditional release until the Appeals Chamber has ruled on the appeal.

In the meantime, preparations for trial continue. Today, we are presenting our amended document containing the charges, a trial brief and all our incriminating evidence.

Darfur, the Sudan

During the Abu Garda confirmation hearing, we presented two witnesses who were victims of the attack. For the OTP, attacks against peacekeepers are very serious crimes, with a huge impact. My Office will ensure investigations of crimes against peacekeepers. Somalia is the example of the consequences of the withdrawal of peacekeepers.

Let me turn to our **preliminary examination activities**, a key aspect of the complementarity regime.

Our experience shows that making transparent preliminary examination activities will increase the predictability of the Court, the cooperation of the different stakeholders and the preventative impact of the Rome Statute in general.

We have examples of the importance of such a transparent approach in our current preliminary examinations in Colombia, Kenya, Côte d'Ivoire, Afghanistan, Georgia, Palestine and just recently Guinea. Let me give a few examples.

Regarding Kenya, I met on 3 July with a Government delegation from Kenya, led by Justice Minister Kilonzo. They informed me that, in order to prevent a recurrence of violence during the next election cycle, those most responsible for the previous post-election violence must be held accountable. They are committed to ending impunity, and committed themselves to refer the

situation to the Court if efforts to conduct national proceedings fail.

The African Union Panel of Eminent African Personalities, chaired by Kofi Annan, submitted to the OTP a sealed envelope containing a list of persons allegedly implicated and supporting materials collected by the Waki Commission. The leadership of Kofi Annan is essential for my Office. He explained how for instance in Kenya there is no opposition between a truth commission and justice. He presented a three-pronged approach: ICC prosecuting those most responsible; national accountability proceedings for other perpetrators; and reforms and mechanisms such as the Truth, Justice and Reconciliation commission.

With the leadership of the Kenyan authorities, these three tacks should complement each other. I will meet with President Kibaki and Prime Minister Odinga tomorrow to discuss the upcoming steps in investigating and prosecuting those most responsible. I will explain to them what my duties are.

A second aspect that I want to highlight, and which is also included in our Prosecutorial Strategy, is our policy to increase reactivity to upsurges of violence potentially falling within the jurisdiction of the Court in order to promote timely accountability efforts at the national level and to maximize the preventative impact of our work.

What happened in Guinea, a State Party to the Rome Statute since 14 July 2003, is a good example. The Office has taken note of serious allegations surrounding the events of 28 September 2009 in Conakry in accordance with my duties under Article 15. We publicly informed on 14 October that we were monitoring those allegations and just six days later, Foreign Affairs Minister Alexandre Cécé Loua travelled to the Court and met with Deputy Prosecutor Fatou Bensouda. We have requested written information from the Guinean Government on the crimes and on modalities put in place for conducting national investigations and prosecutions of those responsible.

Finally, it is critically important, if we want to further reinforce the preventative impact of the Court activities, to implement the pending arrest warrants.

After 5 years, it is time to do a serious effort to arrest Joseph Kony and the other LRA commanders sought by the Court. They are continuing to commit crimes. First in Uganda, then in DRC, and now in the Sudan.

The only way to stop Joseph Kony is by arresting him and surrendering him to the ICC. Outstanding arrest warrants have to be executed.

We still have one suspect at large in the DRC, Bosco Ntaganda. The worst allegations of gender crimes during the last years were about crimes allegedly committed by troops under Bosco Ntaganda's command. Bosco Ntaganda should be arrested, there is no excuse. All States, including the DRC's neighbours, should facilitate his arrest. I am going to the area next week, in particular to Kigali, to see what can be done.

The Judges' decisions are closing doors; as the doors are closed, no windows can be opened. This is what we need to discuss. How States will make operational their commitment to enforce the Court's decisions.

Excellencies, Ladies and Gentlemen,

Let me focus briefly on my **managerial role**. From the perspective of the OTP, the CBF recommendations raise no concerns. Our focus should remain on cost efficiency, how to do more with the same resources. The OTP has requested no new posts, although our activities greatly increase. In fact, we reduced our requests: the 2009 budget has assessed that the vacancy rate would be 10 %; our vacancy rate is actually much lower: it is below 4%. However we requested a small adjustment. We estimated a vacancy rate of
8%, meaning that we are absorbing a 4%.

There are two key aspects of our cost efficiency: flexibility and standardization. Our teams and our field office will continue to be organized in a flexible manner; the OTP will rotate personnel in accordance with the needs; we must not rigidify our structures.

We will also ensure that our staff increases its efficiency following common standards. We issued the Regulations of the Office of the Prosecutor, we finishing detailed documents on our main policies and we are completing a detailed operational manual. To ensure efficiency, our staff will be trained and evaluated based upon the Office's standards. Our new senior legal advisor is in charge of this process. She has more than 20 years of experience as prosecutor in Durban, South Africa. She was managing an office with more than 700 persons. She will be very good to ensure this standardisation of the Office.

Cost effectiveness depends on the services to be provided by the Registry and in the cooperation that we receive from States. We are grateful for the security, the transportation and the support provided by the field offices staff. We depend on them to conduct our investigations on the field. We are in the process of finding a common understanding on the services to be provided by the Registry to the OTP. We are also working with the Presidency to harmonize better the work of the Court and to produce a clear report on governance. We are committed to the "One Court" principle. We are mindful of our responsibility to build an institution.

Let me conclude. In a few years the Rome Statute Court has become a reality. The Court is doing its judicial work and other stakeholders are ensuring that the Rome Statute is respected. The President of the Court is making efforts the ensure harmony between the Court and the UN. Let me quote the UN Secretary-General in his recent report on enhancing mediation and its support efforts of 8 April 2009: "*Ignoring the administration of justice […] leads to a culture of impunity that will undermine sustainable peace. Now that the International Criminal Court has been established, mediators should make the international legal position clear to the parties. They should understand that, if the jurisdiction of the International Criminal Court is established in a particular situation, then, as an independent judicial body, the Court will proceed to deal with it in accordance with the relevant provisions of the Rome Statute and the process of justice will take its course*".

This is also confirmed by the recently released report of the AU High Level Panel on Darfur, under the chairmanship of former President Thabo Mbeki. President Mbeki requested more accountability in Darfur. The report encourages more activities to ensure that there is no impunity for crimes committed in Darfur. It fully respects the role of the ICC as an independent, judicial institution. The report neither challenges the evidence collected, nor does it question the arrest warrants issued against Ahmad Harun, Ali Kushayb and President Al Bashir. The report does not challenge the ultimate role of the ICC Judges in deciding on those cases.

The report proposes an additional solution to fight against impunity in Darfur, the creation of a hybrid court to complement the action of the ICC. It is not an alternative to the ICC. It is meant to address those cases that the ICC will not deal with. Of course, these hybrid courts, if established, would face the huge challenge of actually prosecuting members of the army and

police inside the Sudan, who benefit from *de jure* and de fact immunity, and with the huge challenge of protecting witnesses.

The leaderships of Secretary-General Ban Ki-Moon, President Thabo Mbeki and former Secretary-General Kofi Annan are remarkable demonstrations of progress of the Rome Statute system. It is a good moment for the Kampala review conference.

Appendix P: 18th diplomatic briefing

Cour
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International
Criminal
Court

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

18th Diplomatic Briefing

Statement

The Hague, 26 April 2010

English Version

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Excellencies, Ladies and Gentlemen,

I am pleased that we can meet in advance of the Kampala Conference, which, as the President said, is a seminal event in the further reinforcement of the international justice system.

There are many reasons for celebration. We will arrive in Kampala with 111 States Parties, regular interaction with the UN Security Council, as well with strong relations with non-States Parties, governmental and non-governmental organizations, and with the common understanding that the ICC is a fully operational Court.

In a few years, the Court has become a part of the international landscape.

The delegates of 1998 put a new design on paper, an innovative design to manage violence in the world. 2010 is different. You can take stock of the successful implementation of the Rome system, and decide how to strengthen the system.

As the President said, the Court will not be involved in any way in definition of, or amendments to the law. Legislative powers belong to States. But we can contribute to the stock-taking exercise. The facilitators did a tremendous work preparing the ground for our meeting in Kampala. I would like to thank them and present some comments on the four issues to be discussed there, starting with the role of victims.

The Rome Statute establishes victims as actors in the system, not just passive recipients of justice. Victims are critically important during the preliminary examination phase, helping my Office to select situations to investigate. We have received thousands of communications in accordance with Article 15 of the Statute. Gravity of crimes against victims is the single most important criterion in the selection process of situations and cases. My Office will continue to fully respect their rights to participate in the Court's proceedings. We recently published our policy paper on victims' participation, designed to ensure a consistent and clear approach of the Office.

If I had one wish to add to the list of expected achievements in Kampala, it would be to ensure that victims are given in peace processes the same role that they have in proceedings in the Court. They should be listened to. In Rome, States were mindful that "*during the 20th century millions of children, women and men have been victims of unimaginable atrocities*" and they

"*recognized that such grave crimes threaten the peace, security and well-being of the world*". The UN Security Council has also recognized the importance of victims, in particular women, in conflict resolution and peace processes, first in Resolution 1325 (2000) and in subsequent resolutions. But the practice is different. Victims of sexual and gender violence and child soldiers are now listened to in the courtrooms. But we don't see them yet at the negotiating table. Their rights are ignored. Could I ask the delegations in Kampala to ensure that the principles established in the Preamble of the Rome Statute and in the UN resolutions are implemented?

Let me now turn to cooperation and complementarity. The Rome Statute is an agreement between States, based on these two principles: complementarity and cooperation.

As the President said, cooperation is forthcoming. 85 per cent of my Office's requests for cooperation to States Parties and non-States Parties receive positive answers. This is a highly satisfactory rate. States are fulfilling their legal duties, and including cooperation to punish and prevent massive crimes in their policies.

But, as stressed by the facilitators and emphasized by the President of the Court, one remaining challenge is to arrest individuals when they are protected by active militias or when they use the state apparatus to commit massive crimes. Kampala is an opportunity to refine our strategy to face this challenge. I would encourage you to add the following key points to your pledges in Kampala:

a. Public and diplomatic support to execute arrest warrants issued by the Court;
b. Severance of non-essential contacts with persons who are the object of an ICC arrest warrant;
c. Cutting off all supply networks to such persons; and
d. Providing concrete support for arrest operations.

Regarding positive complementarity, the Office of the Prosecutor has adopted a proactive policy. Our cooperation with Germany regarding the recent case against an FDLR leader in the DRC situation is one example of this approach. We are ready to discuss in Kampala how to further develop various forms of judicial interaction with States Parties and non-States Parties. As the President said, in the DRC, there are judges and prosecutors willing to investigate and prosecute cases, but they need protection, for themselves and for the witnesses.

With regard to peace and justice, the stock-taking exercise in Kampala will provide an occasion to

confirm the States' commitment to end impunity for the perpetrators of the most serious crimes, thus contributing to the prevention of such crimes. The failure to act during the Rwandan genocide provided the impetus in Rome to transform the pledge of "never again" from a moral promise to a legal standard.

This is a new reality, and we have to adjust to it. In fact, we are. This principle has been put into practice, among others, by two high level representatives of the African Union, former South African President Thabo Mbeki and former UN Secretary-General Kofi Annan; both have stressed the need to ensure justice in their work in Darfur and Kenya to end recurring violence. Both need the full support of the 111 States Parties. If we are committed, certainty of investigations and prosecutions for the most serious crimes will deter future crimes.

The best example is Kenya. Justice for the post-electoral violence in Kenya will ensure a peaceful election in 2012. Additionally, it will send a clear message for the 15 elections to come in the region: violence during electoral times cannot be a tool to retain or to gain power; but it is a sure avenue towards a one-way ticket for prison in The Hague. That is the message we need to send it Kampala.

Excellencies, Ladies and Gentlemen, Let me conclude.
Since 1998, the Rome Statute was adopted, the Security Council referred a situation to the Court, and the Court issued its decisions on individual cases. The situation is clear. Kampala is an opportunity for States to demonstrate their consistent support for the new legal framework established in Rome, for a renewed commitment to protect the rights of the victims of the most serious crimes.

Let me conclude by thanking the Government of Uganda in providing a venue for the Review Conference in Africa, a leading continent in the fight against impunity. As an example, I met last week with the President of Tanzania Jakaya Kikwete and I was struck by the forward-looking ideas he plans to put forward in Kampala, including on the future of the Arusha facilities to assist in the work of the Court in Africa.

Thank you. I look forward to seeing you in Kampala in a month.

Appendix Q: 19th diplomatic briefing

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

19th Diplomatic Briefing

Statement

The Hague
3 November 2010

English version

Check upon Delivery

Excellencies, Ladies and Gentlemen,

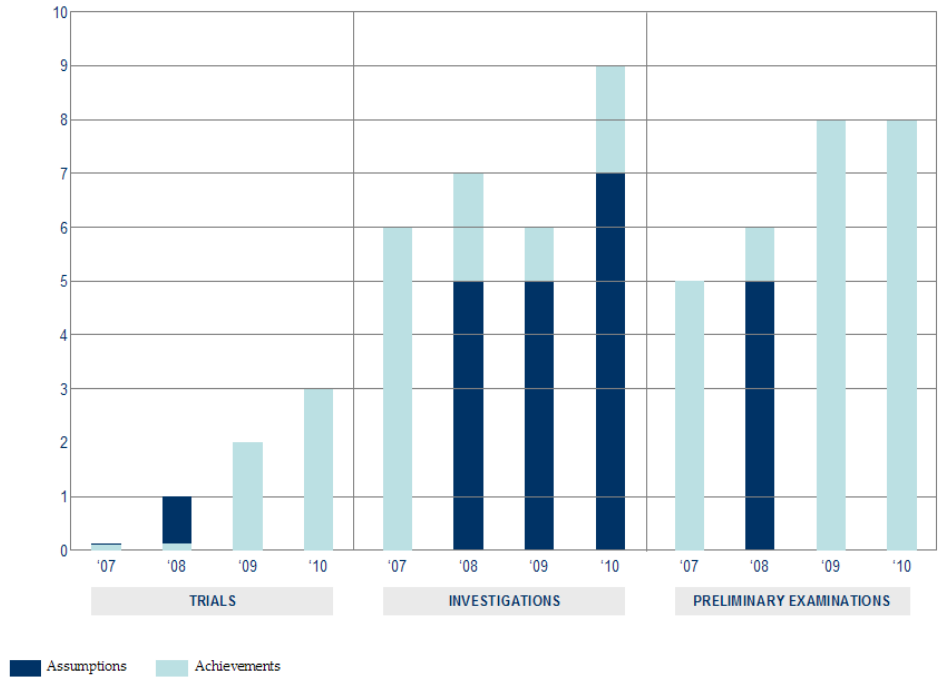
As the President said, it has been a truly **eventful half year** since we last met. I will take advantage of his detailed report on our judicial activities to focus on a specific issue: the evaluation of the efficiency, effectiveness and the economy of the Office of the Prosecutor.

The Assembly of States Parties (ASP) is analyzing the possible overlapping of its subsidiary bodies in fulfilling its management oversight role, and the Hague Working Group is active on this matter. Last September, it held a special meeting where the President of the Court explained the final Court's decision on internal governance, as well as the preparation of a new report on Court-ASP relations, hoping that this report would serve as a good starting point for discussions. The President also expressed his personal commitment to lead this process and to make it a success. The Office welcomes this important discussion; it is a critical part of the development of this innovative institution. Personally, this is one of the priorities for my last 19 months as the Prosecutor. I commit to providing the relevant information allowing States Parties to make their decisions. To paraphrase the President, States may not agree with all points of our approach, but clarity on the Office of the Prosecutor's views can help move the discussion forward.

Since September 2003, the public policy of the Office of the Prosecutor is to ensure cost efficiency. Each year, the Office presents a budget with the activities that it will perform. After the ASP approves the budget, the performance of the activities programmed should be the primary indicator of the efficiency, effectiveness and economy of the Office.

I prepared a chart to show you the different assumptions during the last four years.

Comparison of OTP Achievements and Assumptions, 2007-2010



The only unfulfilled assumption is the 2008 trial and is connected with the first decision to stay the proceedings in the Lubanga case. This was an important long term investment that built the legitimacy of the Court. This is a Court of justice, where the law and the rights of the parties are taken seriously. That is why non-States Parties such as Russia, Rwanda, China and the USA, and regional organizations such as the Arab League work closely with us. That is why leaders involved in atrocities are fiercely attacking us.

Since then, you will note that the Office's activities have constantly been in accordance with, or even exceeded, the activities budgeted for.

During 2010, we started two unforeseen investigations in Kenya and we are not using the contingency fund.

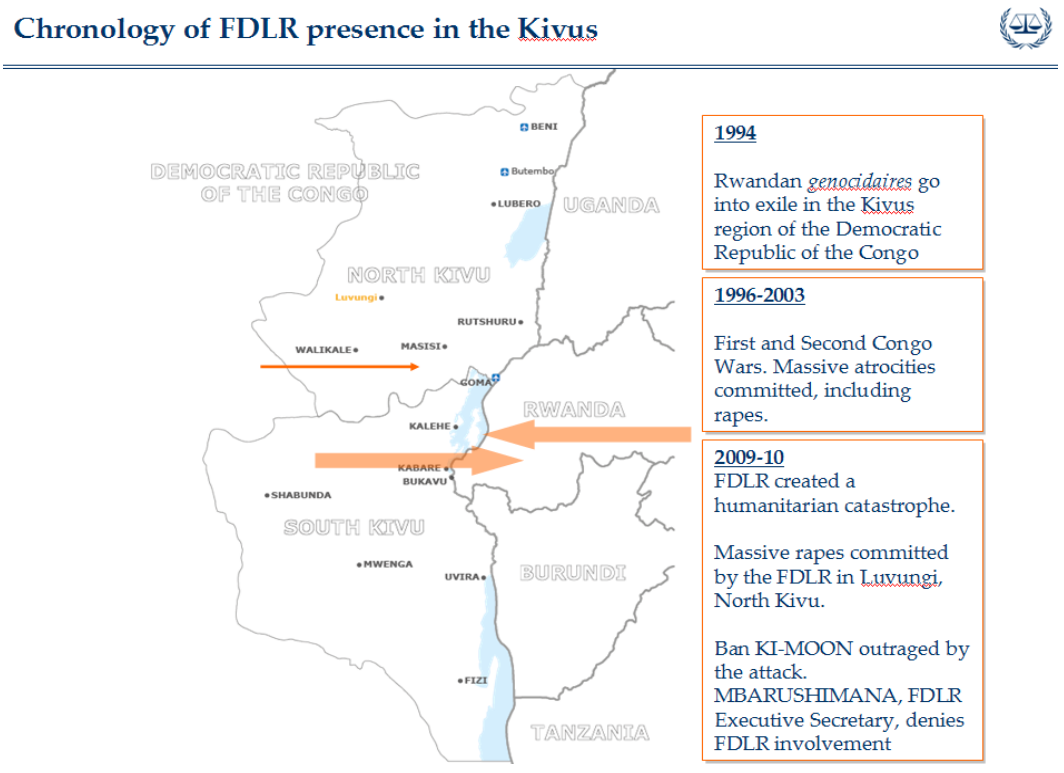
We are increasing efficiency, doing more with the same amount of money. You can also see that for 2011, the OTP has requested a reduction of 0.2%. States will define our budget, and we will independently implement it in the best possible way, with the

necessary oversight. Let me present a different dimension of the efficiency, effectiveness and economy.

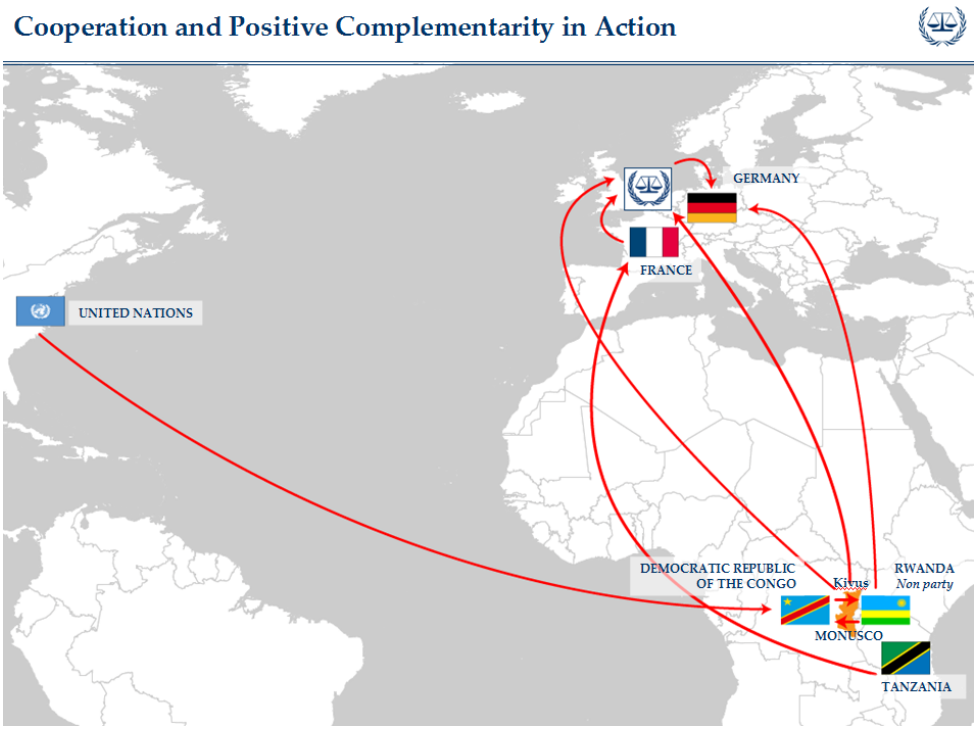
President Song has explained in the past that the Court itself is just one part of the justice system. The other parts, such as States, international organizations and civil society are needed to make the system effective.

As in any court, the Judges make the final decisions on the criminal responsibility of the accused. But as in no other Court, the Judges decisions will have an impact on the citizens and the institutions of 114 States and beyond. We need to include these two dimensions in our conversations about effectiveness and efficiency.

A good example is the investigations into the FDLR (*Forces démocratiques de libération du Rwanda*).



They were carried out in cooperation with different States Parties, such as the Democratic Republic of the Congo (DRC) and France, as well as non-States Parties, such as Rwanda, and proactive activities of Germany, which is conducting national proceedings against the President and Vice-President of the FDLR. This is the first case in which the Office provided information to national authorities to carry out proceedings, thus implementing our policy of positive complementarity.



The results of our investigations in the Kenya situation will be presented to the Judges in December. We are preparing two cases against six individuals. These cases could have a critical role to play in preventing violence in the next election in Kenya and in another fifteen countries of the region. Just last Friday, in anticipation of the presidential elections on 7 November, Guinean Minister of Justice Col. Siba Loholamou stated that any violence will be punished, including in accordance with the Rome Statute.

These few examples illustrate that the Rome Statute established a complex system of justice, where different organs, States and institutions have a singular role to perform in coordination with each other.

Respecting the mandate and independence of the Office of the Prosecutor is the best way to ensure the efficiency, effectiveness and the economy of the innovative system of justice created in Rome and celebrated in Kampala.

I will now pass the floor to Mme Registrar.

Appendix R: 20th diplomatic briefing

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Luis Moreno-Ocampo
Prosecutor of the International
Criminal Court

Remarks to the 20th
Diplomatic Briefing

The Hague 8 April 2011

Check against Delivery

Excellencies, Ladies and Gentlemen,

As the President stressed, the second UN Security Council referral demonstrates a growing trust on the role of the Court. There was no discussion or hesitation. The matter was referred as a normal activity. It was not just for the Libya situation: the UN Security Council Resolution 1975 (2011) of 30 March on Côte d'Ivoire also took note of the Court's activities.

I would like to brief you on activities of the Office in these two situations.

As the Prosecutor, my first responsibility was to conduct a preliminary examination regarding the situation in **Libya**. It is important to note that in accordance with Article 53 of the Rome Statute, when the Office receives a referral it shall initiate an investigation, unless there is no reasonable basis to do so. As opposed to the Sudan situation, there was no indication of national proceedings. We moved fast, and the Office opened the investigation on 3 March.

We immediately created a team of about ten investigators, most of them fluent in Arabic, reallocating resources from different investigative teams on a provisional basis. The Office is applying for the Contingency Fund for the Libya situation. We showed the Court was ready to immediately start a new investigation.

We are focusing the first investigation on a few specific incidents that occurred in the first ten days of the conflict. We have been able to collect strong evidence on two different aspects:

1. A specific Libyan regime policy to attack civilians; after the Tunisia and Egypt situations, they were planning how to control demonstrations in Libya;
2. Incidents where unarmed civilians were attacked by security forces.

The Office is now focusing on identifying those who bear the greatest criminal responsibility for the crimes committed. We are very advanced.

We are paying particular attention to the security conditions. The Office is avoiding contacting any person that could be attacked by Libya's security forces. We rely on evidence provided by persons that are not subject to any foreseeable risk for them or their family, in Tripoli or in other places. We are very selective of the persons we approach. We do not want to place persons under the Court's protection system. It is a matter of efficiency, and it is a matter of respect for the lives of the witnesses. This is my duty.

The Office of the Prosecutor is deeply concerned about the situation of civilians in Tripoli in particular, and other cities under the control of the regime. Internal Security Forces carried out a policy of arrests and forcible disappearances against those who they consider as not loyal, because they participated in the demonstrations, as well as regime critics and individuals who had communicated with foreign journalists and human rights organizations. This is also why we are avoiding contact with them.

The Office of the Prosecutor is progressing fast because it is receiving cooperation from many sources, including Interpol and many States Parties. We are also in contact with the Commission of Inquiry created by the UN Human Rights Council, which is planning operations.

I will brief the UN Security Council on Libya on 4 May; to increase predictability and respect its prerogatives, I will inform the Council of my next steps, including the time that my Office will present the evidence before the Judges and request an arrest warrant.

It is important that States start discussing how to implement an arrest warrant in the Libya context if the Judges issue such a warrant. States can decide whether implementing an arrest operation is a matter for the Libyans, or if the international community can help. I don't see a reason to wait to have an arrest warrant in order to start the discussions and plan.

Let me emphasize: I am confident that we will present a first request for an arrest warrant in a few weeks. The Judges will decide. If they agree, States should have a plan.

In subsequent investigations, we will look at other alleged crimes, including rapes, abductions, forced disappearances, forced displacement and torture.

Excellencies, Ladies and Gentlemen,

Let me focus now on **Côte d'Ivoire**.

On 1st October 2003, the then Government of Côte d'Ivoire submitted a declaration under Article 12(3) of the Statute, accepting the jurisdiction of the Court for crimes committed on its territory as of 19 September 2002. Since then, my Office has been conducting a preliminary

examination, monitoring the crimes in this situation.

Since December 2010, there have been consistent allegations of new crimes under the jurisdiction of the Court committed in the aftermath of the presidential runoff.

Recently, on 18 December 2010, we received a new Article 12(3) declaration, this time signed by President Ouattara, committing himself to cooperate with the Court.

In the meantime, the Office has reminded all parties to the conflict that any attack against civilians should be investigated and prosecuted. The Office is working in close collaboration with the UN, ECOWAS and different States concerned with the situation.

We have received information from Mr. Ouattara and Mr. Gbagbo, as well as from other sources. We will also liaise with the UN Commission of Inquiry to ensure effective coordination.

We are progressing in our preliminary examination activities, but let me clear: a declaration under Article 12(3) is not a referral. To start an investigation, I should request authorization from the Pre-Trial Chamber in accordance with Article 15. Therefore, a referral would expedite our activities. Some States Parties are analyzing whether to refer the situation to the Prosecutor.

Côte d'Ivoire could be an opportunity to assist national authorities to develop a comprehensive program of justice, reconciliation and development. Again, States' plans will be required; the Office will contribute to the prevention of future crimes by performing its judicial activities.

Excellencies, Ladies and Gentlemen,

Let me conclude by asking your assistance to explain the **preventative dimension** of the Court. The Rome Statute is adding a crucial tool to the diplomatic arsenal. The work of the Court and States' efforts in the situations in Libya and Côte d'Ivoire could be useful to draw a permanent line: leaders cannot commit atrocities to gain or retain power. There will be no impunity for such behavior.

This line will help the understanding that this new tool could potentially save hundreds of thousands of lives and billions in money, avoiding new conflicts, and this should be factored in.

What is happening in **Guinea** is a clear example of this.

We are working with the national authorities and some States concerned to ensure justice for the crimes committed during the 28 September 2009 events. As a consequence, there were concerted efforts promoting national investigations, and there was a peaceful election.

Last week, the Office led its fourth mission to Guinea to follow-up on the on-going national investigations and link up with the newly established authorities. The delegation of the Office met with the President of Guinea, Mr. Alpha Condé, the Prime Minister, Mr. Mohamed Saïd Fofana, and the Minister of Justice, Mr. Christian Sow. All the top authorities of Guinea confirmed their commitment to justice and accountability, including in particular for the crimes committed on 28 September 2009.

I would appreciate if you could assist us explaining this new idea in your diplomatic activities. Even though it is in the Rome Statute, it is not yet fully perceived and understood. This is what the UN Secretary-General is calling the "shadow" of the Court, and its value should be better evaluated. This is the most efficient way the Court's efforts can help stop new violence.

Let me finish.

To ensure this preventative impact, to guarantee the legitimacy of the Court in the years and decades to come, a clear **external governance system** is needed. The President expressed the importance of the work on external governance for the Court. The President has the full support of the Office of the Prosecutor: when he speaks, the Court speaks.

I will now pass the floor to Mme Registrar.

Appendix S: 21st diplomatic briefing

Cour
Pénale
Internationale

International
Criminal
Court

Luis Moreno-Ocampo
Prosecutor of the International
Criminal Court

Remarks to the 21st
Diplomatic Briefing

The Hague
8 November 2011

Excellencies,

Ladies and Gentlemen,

As indicated by the President, the activities in the Courtroom are progressing. The Lubanga decision is coming, and today, the last testimony in the Katanga/Ngudjolo trial is starting. The progress in the latter trial shows that the Court is increasing its efficiency with each case.

At this meeting, however, I would like to highlight some other Court decisions, which go beyond the responsibility of individuals; decisions that affect the management of conflicts. States can learn how Court decisions offer possibilities.

The Chamber's decision for the confirmation of charges against Callixte Mbarushimana could have an enormous influence on the demobilization of the FDLR.

The confirmation of charges hearing in the Kenya cases was followed by all the Kenyans. They see that very senior public figures have to provide explanations to the judges. The ICC judges become public figures in Kenya and the judicial process is perceived as fair and is seen as crucial for preventing future violence in this country.

Let me focus on the incumbent Prosecutor's decisions on Darfur, Libya and Côte d'Ivoire that could have impact on the ground, on the way that States involved manage conflicts and on the budget.

In Darfur, the Court issued arrest warrants against Ahmad Harun and Ali Kushayb for the crimes committed against 4 million civilians during 2003/4. After, the Court includes such attacks in the arrest warrants against President Al Bashir. The Office completed the collection of evidence that exposes the responsibility of one individual who is in the chain of command between President Al Bashir and Ahmad Harun. The Office will present a new case before the end of the month. I will brief the UN Security Council on
15 December.

In Côte d'Ivoire, the Court again contributes to stability. Three weeks ago I visited Côte d'Ivoire, and I met with the authorities, the opposition parties, the Truth, Dialogue and Reconciliation

Commission and civil society. We requested cooperation and we confirmed our duty to investigate crimes allegedly committed by all the parties of the conflict. The Prime Minister will be present at the coming ASP to show the commitment of the country with such impartial approach. This does not mean that the Office will present all cases at the same time; rather, the Office will follow a sequential approach.

The Office was closely following the alleged crimes committed since December 2010 during its preliminary examination phase, facilitating the planning of a series of short and very targeted investigations.

In Libya, the current focus of the Office's investigations is twofold: firstly, it continues the collection of evidence against Saif Al-Islam Gaddafi and Abdullah Al-Senussi in preparation for their eventual trial. It is up to the UN Security Council and States to ensure that they face justice for the crimes for which they are charged. Secondly, the Office is continuing its investigations into gender crimes in Libya. Preliminary evidence collected so far indicate that hundreds of women were raped and the involvement of high ranking officials in the commission of gender crimes including sexual violence and rapes.

The death of Muammar Gaddafi has not changed the activities of the Office. The Pre- Trial Chamber considered that *"Muammar Gaddafi and Saif Al-Islam are both mutually responsible as principals to the crimes"* and most of the witnesses refer to activities that include both of them. Even if witnesses can only speak about the actual role of Muammar Gaddafi, the Office still has to conduct the interviews in order to find exonerating evidence against the other.

Further investigations could also be necessary for other crimes allegedly committed by the different parties in Libya since 15 February 2011. Here, the Office will take in consideration that the new Libyan authorities are in the process of preparing a comprehensive strategy to address crimes, including the circumstances surrounding the death of Muammar Gaddafi. In accordance with the Rome Statute the Court should not intervene if there are genuine national proceedings. The Commission of Inquiry will moreover present a report in March 2011. The Office will be prepared to present a comprehensive report on the crimes allegedly committed by the different parties in Libya since 15 February 2011 and the existence of genuine national proceedings, during its third briefing to the UN Security Council in May 2012. In this sense, around €1.2 million required in the current budget for this third investigation could be removed from

the normal budget and presented in an annex.

Excellencies, Ladies and Gentlemen,

Let me provide some general references to cost efficiency. Mme Registrar will inform you more precise about the budget of the Court.

The public policy of the Office of the Prosecutor, confirmed by its Policy paper of September 2003, has been to focus its investigations and prosecution on those bearing the greatest responsibility for the most serious crimes, based on the evidence collected.

This policy is based on statutory scheme limiting the Court's jurisdiction to the most serious crimes of concern to the international community, ensure a high impact on the prevention of future crimes and promote cost efficiency.

The Office can handle concurrently several situations while respecting its limited resources; the budget would have to be duplicated or triplicated with an expansive prosecution policy.

The debate about a Court case driven or resource driven was solved by the adoption of the contingency fund. That creative solution allows the Office this year to carry out its investigation into the unforeseen Libya situation.

The Office presented a budget proposal amounting to €31.8 million for 2012. This comprised €5.36 million for the 2012 case assumptions in the situation of Libya, referred to the Court by the UN Security Council earlier this year, and an amount of €26.4 million for the "other cases" already before the Office prior to the Libya referral (Uganda, DRC, CAR, Darfur and Kenya). Accordingly, the Office was able to present a 0.5% below zero nominal growth budget compared to the 2011 budget for the "other cases".

The Office is faced, for the first time, with the possibility that investigations cannot proceed due to resource constraints. The CBF proposal would entail a change to the previously agreed structures, and will transform the decision making. Some cases will not be investigated because budgetary constraints. Changing the model of the Court from a case driven to a resource driven one, is more than a budget issue, it is a legal and strategic question.

To conclude, let me take advantage that so many Ambassadors are present here, to respectfully present some problems in our debates in The Hague Working Group.

The Working Group is having discussions dealing with governance; these are of crucial importance to the Office.

The Office considers that the oversight role of the ASP should be consistent with the Statute in accordance with which the Prosecutor is accountable but independent to the ASP; and the staff of the OTP is accountable only to the Prosecutor and not to the ASP or its subsidiary bodies.

In the discussions on the Independent Oversight Mechansim, the Office held the view that the suggested “three pronged” approach circumvents the ASP resolution and has no legal basis in the Statute.

Discussions should be based on legal merits. The Office is prepared to present additional information at the appropriate time.

Thank you

Appendix T: 22nd diplomatic briefing

Cour
Pénale
Internationale

International
Criminal
Court

Fatou Bensouda

Prosecutor of the International Criminal Court

Remarks to the 22nd Diplomatic Briefing

[check against delivery]

The Hague 19
September 2012

Excellencies, Ladies and Gentlemen,

Thank you for being here today.

This is my first opportunity to brief you as Prosecutor of the International Criminal Court, as three months have passed since I assumed office. Before anything, let me join President Song in offering my sincere condolences to the families, friends and colleagues of the US Ambassador and staff who so tragically died in Benghazi. Allow me also to thank you once more for the privilege, responsibility and vote of confidence bestowed upon me by the Assembly of States Parties and the wider international community, and to express my gratitude for the honour to continue to serve international justice.

As President Song mentioned in his statement, this Court has witnessed many changes in the recent months, which have been an intense period. I personally *alia* spoke at two gender seminars in The Hague, earlier this month; I was invited to travel for official visits to Senegal and Nigeria, in July, where I amongst others met with the respective Presidents; and my Office also opened a preliminary examination into the situation of Mali, following the visit by a delegation from Mali, led by the Minister of Justice, on 18 July, formally requesting an investigation.

These are just a few examples. But I mention them, as they relate to some of the priorities I have identified for my tenure as Prosecutor.

I should also add here that last week, I submitted to the Assembly of States Parties the names of the three candidates for the position of Deputy Prosecutor. Following an extensive process, the following candidates were selected: Ms Raija Toiviainen (Finland); Mr Paul Rutledge (Australia); and Mr James Stewart (Canada). These candidates were selected from a pool of 120 applicants. This nomination is a culmination of an extensive interview process, which was conducted by myself and my Office with outside assistance. The process, which started in May 2012, included an initial screening, written test, oral presentations, face-to-face interviews as well as interaction with Senior Managers and Trial Lawyers within the Office. Allow me to stress here that all interviewed candidates were of very high quality. I selected the candidates that possess the capabilities and qualities of an excellent Deputy Prosecutor, taking into account the requirements of article 42 paragraph 3 of the Statute and my vision for the Office.

Of course, the list of pressing issues for me as Prosecutor is long, but one important goal I have set is to ensure that the Office delivers high quality and efficient investigations and prosecutions, which are at the heart of what my Office does. Next to focusing on actually doing those investigations and prosecutions, I also want to reflect on how we can further improve them. We have already defined our basic standards on how we do the investigations with the issuing of our operational manual but I now want to further improve those standards aiming at defining what could be commonly accepted standards for doing international investigations. For that purpose, I am reaching out to the other international tribunals, to international organizations like Interpol and to the law enforcement community in general. With the first trials coming to an end and the lessons learned exercises that the Court is embarking upon, my plan is to further consolidate our prosecutorial standards in the operational manual.

Specifically, regarding our investigations, we have an obligation and a duty to focus our attention on sexual and gender violence. As it can be a challenge to gather evidence of these crimes in some contexts, we will continue to look for innovative methods for the collection of evidence to bring these crimes to Court in a way that will ensure their prosecution and will respect and protect the victims.

The Office will continue to pursue the gender crimes and crimes against children defined in the Rome Statute and the Office will do so systematically. In so doing, I would like to strengthen the cooperation between my Office and civil society. My Office will continue to periodically and consistently revisit its policies and practices regarding sexual and gender crimes, to ensure effective prosecution of these crimes and always striving to do it even better. I hope to finalize a gender policy paper soon.

The appointment of Brigid Inder as the new Special Gender Adviser of the Office will also help to get strategic advice on sexual and gender-based violence, together of course with the strong team I have within the Office.

During my tenure, I also want to contribute to the Court's efforts to strengthen the Court's relationship with Africa. Mali is the fourth African State to refer a situation to the Office of the Prosecutor. ECOWAS also officially supported the Office's intervention in Mali. I am proud of this support as well as the commitment to this Court expressed by the African continent. I will continue to seek the support of all States Parties, including in Africa. Already plans are underway for my visit to Addis Ababa to meet the new Chairperson of the AU.

I also want to continue to clarify the process of the Office's preliminary examinations, and ensure transparency in the decisions. For me, preliminary examinations are key elements of OTP activities, as they can provide early opportunity, through contacts with relevant authorities as well as public information, to encourage national proceedings and prevent recurrence of violence. In the coming months the Office will, similar to last year, publish a report on all its preliminary examinations, as well as a comprehensive report on the preliminary examination in Colombia.

Excellencies, Ladies and Gentlemen,

In general, the relationships of the Office, within and outside the Court, are important to me. In these relations, the Office's independence as the cornerstone of the Rome Statute system should at all times be respected and protected, in particular by States Parties. The system established by the Rome Statute is based on the concept of independent judicial activity. Without its independence, the Court risks losing its value.

This however does not mean that the Office is an isolated organ. On the contrary. The efficiency of the Court and of this Office relies on the cooperation it receives from the international community. After ten years in operation, the Court and its States Parties have established a system that is operational. Assistance is largely forthcoming. But in order to maximise the Court's role and impact, as well as to improve the Court's effectiveness, it needs the sustained cooperation of all the States Parties to the Statute, in particular when it comes to arresting individuals sought by the Court. In this light it is also perhaps worth recalling the 66 recommendations formulated by the Bureau in 2007. Strategies and efforts to ensure the arrest and surrender of those individuals against whom arrest warrants have been issued must remain at the top of the political agenda of all States Parties. The cost of impunity is simply too high.

Bosco Ntaganda's continued presence in the Kivu provinces is a high risk; the international community needs to support the efforts of the Government of Uganda to arrest the leaders of the Lord's Resistance Army. The Government of Sudan has consistently failed in its responsibility to cooperate with the Court and to arrest and surrender the individuals sought by the Court in relation to the situation in Darfur. The collective community of States therefore should now consider what measures can be taken to ensure execution of the arrest warrants short of military intervention.

On a separate note, but similarly related to the support by the Assembly of States Parties, I would like to join President Song in mentioning the resources of the Court. We are all aware of the very difficult economic environment, including for the States Parties, and also aware of the very difficult budget discussions last year.

Throughout the years, the Court, including the Office of the Prosecutor, has consistently found creative ways to ensure and increase efficiency and find savings. For the Office, in addition to the operational manual and standardized policies, the rotational model of moving teams across cases depending on needs has in particular created cost benefits through efficiency gains. However with ever increasing Court activities, we have reached the limits of our absorptive capacity; the 2013 proposed budget is the minimal and reflects the Court's efforts to cut down on costs. Any additional cuts will have considerable impacts on Office's capacity to do its work and fulfill its mandate given by States. I would therefore encourage positive attitude of delegates in the discussions on the budget, knowing that justice is a worthwhile and relatively inexpensive investment in the future.

Excellencies,Ladies and Gentlemen,

With the necessary support from the States Parties, in the coming months and years, the Office of the Prosecutor will continue to improve the quality of its prosecutions. The decision of Trial Chamber I sentencing Thomas Lubanga to 14 years imprisonment, as well as the decision on the reparations principles and proceedings, which the President mentioned earlier, are a great incentive to continue our prosecution in our other cases.

In *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, the judgment is expected to be delivered hopefully before the end of this year, and in *The Prosecutor v. Jean-Pierre Bemba Gombo,* presentation of evidence by the defence started on 14 August 2012, within a total timeframe of up to 8 months set by the Trial Chamber.

As we prepare for trial in April next year for the two Kenya cases, we continue to face huge security and witness intimidation issues in Kenya. We can also do with much better cooperation from the Government of Kenya.

As the President also mentioned, we are awaiting to hear what will be the new date for the

commencement of the confirmation of charges hearing in the case against Laurent Gbagbo, and the same goes for the trial date in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* regarding the attack of the AU peacekeepers in Haskanita in Darfur.

All in all, it is safe to say that there will be sufficient work ahead of us. I hope I may count on your cooperation and support throughout these activities of the Office and more.

Thank you for your attention.