

# Reflections of an International Criminal Court Prosecutor

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It is a distinct honour to be named President of UNA-LASER and to be given the opportunity to address you this afternoon. I am particularly grateful to you, for nominating me as President of UNA - LASER for the year 2023/2024. I could not ask for a greater or more prestigious position and I express my deepest gratitude to you all for considering me worthy of the status. I am equally pleased to be able to address you on my work and reflections on the International Criminal Court, the ICC, an institution I have had the privilege to serve as its immediate past Chief Prosecutor, and to celebrate the importance of the court and crucial work it was set up to do.

With your indulgence, I wish to benefit from this platform to say a few words about how I conceived as extremely critical for the International Criminal Court, as a judicial institution to continuously endeavour to play its part, in advancing a culture of accountability for the most serious crimes that shock the conscience of humanity.

The international criminal justice project was conceived on the hard lessons of centuries of human suffering and torment during war and conflict where impunity and lawless wars wreaked havoc and left countless victims behind, without recourse to justice.

The Court is in many ways an extraordinary product of its time, founded through the coming together of a like-minded community of States committing themselves against all odds to a bold vision of a future where access to justice would not depend on family wealth, prominent status or pure good fortune, a bold vision of a future where impunity for atrocity crimes, no matter who the perpetrator, will be checked through the power of the law.

These like-minded states, and the numerous civil society stakeholders that supported and emboldened their efforts, dared to envision an independent international prosecutor, empowered to choose his or her own path, under the conviction that law – effectively and timely enforced – can serve as an important tool to pacify communities and preserve lasting peace and stability.

The Court's subject matter jurisdiction is war crimes, crimes against humanity, genocide, and most recently, the crime of aggression or illegal wars.

The temporal jurisdiction of the Court starts from 1 July 2002. Meaning, that it cannot look at crimes before this date. That is court's cut-off date.

The ICC can have jurisdiction over Rome Statute crimes when committed on the territory of a state party, or by nationals of state parties irrespective of where the crime is committed.

The court's jurisdiction can also be triggered in different ways. Any person, civil society, entity or state can send communications to the office of The Prosecutor for its independent assessment following the statutory criteria of the Rome Statute.

Alternatively, a State Party can refer itself or another State Party to the Court: e.g. DRC, Uganda, CAR, CIV as (self-referrals); State referrals on (Venezuela).

Also the UNSC acting under Chapter 7 of the UN Charter can refer a situation to ICC Prosecutor. However, even in the case of a Council referral, it was always my view as Prosecutor that the office would do its independent assessment to see if it is warranted to pursue the matter.

The ICC is a court of last resort. Meaning, it respects the primary responsibility of States to investigate and prosecute atrocity crimes. Only if a state is unwilling or unable to genuinely investigate or prosecute, will the Court step in.

In February 1999, it was Senegal an African state that became the first State Party to ratify the Rome Statute. This was a historically important step which was soon followed by other States around the Continent. Indeed, Africa as a region played a hugely important role and to further stress this historical role of African states in the materialization of the International Criminal Court, the Democratic Republic of Congo's ratification of the Rome Statute in April 2002 was the needed sixtieth State in order to trigger the entry into force of the Statute.

Today, the Court, as the system's institutional manifestation, benefits from the membership of 124 States Parties and has possibly greater reach due to the Court's jurisdictional competence. The African region remains the largest block of States Parties.

The ICC's beneficiaries are not one people, one nation, one region of the world, but humanity as a whole. And that is why in my view it was so important to support its progress and growth in membership from underrepresented regions.

In today's world, gripped by devastating conflicts, such as the war in Israel and Gaza, in Ukraine, Ethiopia, just to name a few we need more law and institutions that promote the rule of law, not less. We need such investments both domestically, and internationally.

In my reflections it is the perfect occasion to recall the reforming power of innovation and ideas towards greater justice awareness and indeed, justice, tangibly experienced.

International criminal law has come a long way, and it is grace to a collective effort, with input from all corners of the globe, that it is here and ever evolving. We must not lose sight of the fact that with the establishment of the ICC itself, an important normative but also structural and systems-based message was sent globally:

- That first, the commission of mass atrocities as merely politics by other means will *no longer* receive a pass, and that perpetrators irrespective of rank or official status *must* answer for their crimes; and
- That an international criminal justice system, based on cooperation and complementary action between authorities at the national and international level, is crucial to a rules-based global order.

Notwithstanding the challenges inherent in the work of the ICC OTP, it was of utmost importance to me and the office I led that we would at all times remain committed to the important mandate bestowed upon us by the Rome Statute, as we were clear eyed about the immense responsibility we shoulder, and the importance of the Court to cultivating a culture of accountability for atrocity crimes, and to the rules-based global order.

In that role as Prosecutor, I tried my sincere and honest best, with the courage of my convictions, to seek to execute the mandate bestowed upon me independently, impartially, and objectively - come what may, by way of criticism and critique. These principles continued to drive all my actions throughout.

It was against these standards that during my tenure, I conducted preliminary examinations of all situations, across the globe, that come to our attention through communications submitted to the Office, or following referrals by States Parties or the UN Security Council, to determine if they warrant the opening of investigations, and thus the intervention of the Court.

Situations under preliminary examination by my Office included those in Colombia, Venezuela, Nigeria, Guinea, Ukraine, UK/Iraq, Bangladesh/Myanmar, Palestine, the Philippines and Afghanistan bringing all of them to conclusion by the end of my tenure in one way or the other, whether it was to open investigations or close the preliminary examinations itself or by just handing over the completed preliminary examination work to my successor to take further decisions.

Each of the situations was always unique and complex. And what is at stake is always so tremendously high.

It was my conviction that we were important ambassadors of the rule of law, justice, accountability and international criminal justice. Each of us individually and collectively, in our respective capacities, at the Office of The Prosecutor, had the responsibility of shaping the present and the future of international criminal justice and the Court at its nucleus.

During this PE phase of any of these activities, I would lead my office conduct a rigorous analysis of all available information to assess the statutory requirements of jurisdiction, complementarity, gravity, and the interests of justice.

To be sure, we defer to and encourage proceedings at the domestic level, where possible, in line with States 'primary obligations to investigate and prosecute Rome Statute crimes.

In certain situations under preliminary examination, the need to assess the existence or efficacy of national proceedings has led to the approach we took known as "positive complementarity".

Colombia and Guinea are examples of situations where either war crimes or crimes against humanity have been committed but where the Office, within the confines of its prosecutorial mandate and through its engagement with national authorities, in conjunction with other regional and international actors, has been encouraging domestic proceedings into these crimes. Through this engagement, my hope was to ensure that the principle of complementarity can be successfully applied in these situations. I am proud to say that due to such efforts national proceedings are being undertaken in these jurisdictions.

Even in the situations where the Court does intervene, and where the Office conducts investigations, with a view to gathering the necessary evidence, the Office would continue to collaborate with national authorities, and others.

The Rome Statute of the international criminal justice system is a dynamic construct, in which the Court – and in particular my Office – as envisaged would interact with a myriad of other actors, at various levels. Think of victims groups, national law enforcement agencies and judiciaries, networks of specialized organizations, specialized courts and tribunals, diplomats, conflict mediators, human rights advocates, academics, and beyond.

With all these actors my endeavour was to foster dialogue and collaboration, including by sharing information and lessons-learned, where appropriate.

I did so mindful that much of the system's output depends on the level of support and assistance between its actors, and with the aim of contributing to the closing of the persisting impunity gap.

All of these efforts are manifestations of an ever-awakening consciousness about the importance of accountability for atrocity crimes pushing The Court to make an important contribution towards this progress.

Therefore, it was obvious to me that a critical factor in the context of the Office's investigations is the importance of cooperation.

The Office needs to receive cooperation not only from the ICC's States Parties, who have an obligation to do so, but also from States not Party, as well as from international and regional organisations.

We became acutely aware of the evolving investigative landscape with more and more individuals and civil society actors collecting relevant information on the ground. At the end of my term, my Office had requested and obtained public arrest warrants or summonses to appear against 45 suspects. Until then, 15 suspects in six different situations remain at large. All these arrest warrants are important, and efforts at securing their arrest was a priority as without such arrests of individuals, trials would not take place.

However, the Court's ability to effect arrests is limited, and necessarily relies on State support. It is also through the arrest of suspects that States testify to the type of conduct that the international community will not tolerate. The goals of the Rome Statute of accountability and prevention cannot be fully met without arrests of ICC suspects.

Again I say that ultimately, each situation is unique, and building strong prosecution cases against powerful people, in difficult, politically volatile circumstances, with many interests at stake, and with limited resources, is a complex and daunting task.

The court's success is largely dependent on cooperation for its work without which the effectiveness of the court will be undermined. Whilst the court carries out its judicial work, it is the obligation and responsibility of states to cooperate and assist that work under part 9 of the RS. I should emphasize again that without arrests there are no trials, and all the efforts up to that point by the ICC OTP and others, including cooperation partners and victims and witnesses, are in many ways frustrated.

Ladies and gentlemen. Let me say emphasize these points No one said that addressing atrocity crimes and fostering an international criminal justice system were going to be easy. But these are goals that must be achieved for the progress of humanity.

In 2012, when I was sworn in as Chief Prosecutor of The ICC, I had no illusions about the enormity of the task ahead. With this mandate comes great responsibility, requiring focus, often self-sacrifice and fortitude. When I took the oath, I stated that justice, real justice, is not a pick-and-choose system, and that to be effective, to be just and to be a real deterrent, my Office's activities and decisions must be based solely on the law and the evidence. We may operate in a political environment but our work must be shielded and free from the winds and whims of politics when those trends are not aligned with our collective obligations under the Rome Statute. During my tenure, I have done my utmost to live by these convictions in the service of the Rome Statute, the treaty establishing the ICC.

I have strived, throughout, to honourably and with integrity discharge a complex multi-faceted mandate, with independence and impartiality. I have made my decisions, with careful deliberation - but without fear or favour. Even in the face of adversity. Even at considerable personal cost.

As you recall I have been sanctioned by the Trump Administration with serious implications for both my personal and professional life for doing my legitimate mandated work. I was denied a visa to the US and my personal account with UN Bank in the US, in The Netherlands and even in The Gambia were blocked as a result of the sanctions. This did not prevent me from doing my legitimate mandated work as I should. The Biden administration recognized that legitimacy of my work, and in a short time after assuming office lifted all the sanctions imposed on me and another colleague.

Before the US sanctions, I have also received vicious attacks on me personally and on the court from my own continent and even from my own country The Gambia based on lack of understanding of my jurisdiction, false accusations of bias,

propaganda, hateful and misleading rhetoric, for doing my legitimate work. I have received threats and intimidations for my work in Palestine, Philippines, including racial slurs from President Duterte himself and from various other sources and interested parties both public and private.

I have sought to focus not on the words and propaganda of a few influential or ignorant individuals whose aim is to evade justice or undermine my work as prosecutor but – rather – to listen to the victims who look to the Court as a beacon of hope, as the last bastion of justice and accountability for atrocity crimes. Upon assuming office as Prosecutor, the changes I undertook at the Office were sweeping. I announced and quickly moved to take a number of initiatives concerning strategic direction, organisational management, and internal office culture. I adopted a new prosecutorial strategy with a major shift in how we investigate and build our cases.

We enhanced our quality control mechanisms, streamlined and strengthened our administrative procedures, improved transparency in how we conduct our work, and made swift and significant efforts to build a positive office culture, firstly by setting up a Task Force on Working Climate to provide the best working conditions for staff and encourage a positive climate to work. I also immediately worked on and adopted a *Code of Conduct* for the Office for appropriate behavior warranting of an international criminal law office which included training of all staff starting from myself and the deputy prosecutor and senior staff.

I further instituted the *Core Values* of “Dedication, Integrity, and Respect.” applicable to every single one of us in the office. These values were captured on posters and during my tenure pasted across the entire office, at the bottom of every email, and through a relentless focus on understanding what they mean in terms of concrete behaviours, top of mind for all of us. For these were not just decorative slogans but standards I strictly applied for my office to live by. During my tenure I endeavoured to strengthen an Office that is transparent, accountable at all levels, both in terms of performance and professional conduct.

All this, together with the team I led, we did in the most difficult of circumstances with lack of sufficient budget, a global pandemic, attacks and threats, sanctions and all. I was able to lead my office to withstand all this. I myself am proud in my conviction that I left a vastly improved, well-functioning office, with many dedicated and resilient staff.

Ladies and Gentlemen,

It has indeed been a roller coaster of a ride serving as ICC Prosecutor. I can laugh about it now [laugh], perhaps because I am done with it now.

But on a serious note, it has been an absolute privilege to serve and to have travelled through this period of history together with colleagues and partners, both within and outside of the court to bring justice for the sake of countless fellow humans who have suffered. I was not expecting it to be easy, and it has certainly not been easy, but I know in my heart of hearts, no matter the odds, that at all times, I did everything to protect and to bring to life the goals and values of the Rome Statute.

Where I may have fallen short, I can assure you, it was not for lack of trying. I have however noted with deep regret that many, even supposed allies to the court and the office will support the work of office of the Prosecutor only when their geopolitical interests are not at stake. I have seen push back on the work of the office if those interests were not served. I have seen attempts to influence my office's work, to intimidate or ignore me when that failed. I have seen supposed allies and so called friends of the court snub me because I did not do what they would have liked me to do. That I did not "understand how things work". Despite the pressures, both public and private I never yielded. I did what I am truly convinced was in the interest of the Rome Statute. I am glad and proud of my service in that regard.

As we observe the challenges of our time, we see that our precious multilateral and rules-based global order is under pressure. Rise of populist administrations and protracted violent extremism based conflicts, in almost all regions of the world today, challenge our common values and goals. Such challenges must not detract or deter us from working together, undeterred, to ensure the forward march of international criminal justice. It is precisely at times like these – when international criminal justice is under assault, when we are witnessing a clash and crisis of fundamental values – that courage and conviction must guide our actions to protect our common values and goals.

Where mass crimes are tolerated with impunity, where justice is silent, and where truth is unheard, we make it possible for evil to triumph. It takes the courage and often, the sacrifice of millions, to finally adopt and support institutions such as the ICC that advance the human condition and experience.

States Parties as custodians of the Rome Statute, academia, the legal profession, organizations such as UNA LASER amongst other stakeholders invested in the success of the international criminal justice system and the rule of law must discuss and coordinate proactively to see how they can protect and support the ICC as a fundamental pillar of the evolving international criminal justice system.

This means also to assist the Court by insulating it from attacks aimed at undermining its judicial and prosecutorial independence. And to give those legal professionals and champions of the rule of law, who are in the trenches, who are assuming personal risk to do this crucial work, hope in the knowledge that we stand united in the defence of international criminal justice. In these volatile times are a timely and helpful occasions for dialogue, and an appropriate moment in history to discuss how we can advance our common cause as advocates and agents of peace, stability and the rule of law.

Ladies and gentlemen,

I address you today as a representative of that movement, as your President but also as the immediate past, independent and impartial Prosecutor of the ICC. As I said, being a prosecutor is not always the most popular job, but if done right with integrity, it is an honourable and necessary one for the benefit of society and the people and notwithstanding my term's end, I remain a servant of the law and a staunch proponent of the rule of law.

Nobody becomes Prosecutor of the ICC to make easy decisions; I became Prosecutor of the ICC to make the *right* decisions – legally sound decisions, based solely on the information and evidence before me and my Office, without fear or favour, and always honouring our responsibilities under the Statute with professional integrity.

It seems only fitting to duly reflect on the status of the rules-based global order and the place of international criminal justice in the world today – a world in which greater justice, accountability, and the international rule of law are ever more a reality, and yet still face formidable counter-forces and challenges pulling in the opposite direction.

It is in this world, complete with its complexities, political trends and realities, that international criminal justice, and the ICC as its beacon, are attempting to make their mark in propelling humanity's progress towards a more just world. The Court is too important to allow the cost gains we have made together to regress.

At a time when the benefits of a rules-based order seem to be devalued, this interdependency of the Rome Statute risks becoming an Achilles heel to the advancement of international criminal justice.

Our generation and those who follow us cannot become complacent. To truly benefit humanity as a whole, its protective embrace should be widened. More

States, from all regions of the world should seek to join the Rome Statute as a means to contribute to greater security and stability where it is most needed.

It is my sincere hope and conviction that with unshakable resolve, advocates and agents of peace and stability the world-over such as yourselves in this and future generations commit to ensuring that multilateralism, the international rule of law and their instruments of practice take humanity to the next aeon of civilization.

The challenges are formidable, but so are the costs of failure.

From an evolutionary macro-level perspective, and notwithstanding the many instances of criminality and conflicts that plague our societies across the globe, we are in fact living in an age of rights consciousness.

Ours is the age where dignity, equality and respect for life and liberty amongst other fundamental rights and guarantees have sacred value amongst the people of the world and have become fixed in an ever-emerging global awakening. As I vacated the role of the Prosecutor of The International Criminal Court, I left my office and the court with one fundamental parting advice: that we all must remain firmly principled and vigilant in the service of international criminal justice and the ICC of course. To stay resilient and impervious to political games and posturing. The future and legitimacy of the Court depends on it. It is as simple as that. Don't let anyone deceive themselves or you into thinking otherwise.

So no matter what the naysayers, the biased and politically interested would say or try to have one believe, the successes achieved including on being able to contribute to advancing the jurisprudence of ICL and IHL, is a vindication and acknowledgment of my work as ICC Prosecutor. Always guided by the reality that the right thing must always be done, I worked to the best of my ability at all times, and that I was unwavering in my resolve to execute my mandate without fear or favour.

We owe it to ourselves, to our children and to future generations to nurture the rule of law and protect equality before the law.

Thank you for your attention.