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I. INTRODUCTION

The Pre-Trial Chamber II has issued arrest warrants against five leaders of the Lord Resistance Army (LRA) in the investigation we are conducting in Uganda. These are the first arrest warrants issued by the ICC. This represents an historic turning point in the evolution of the OTP, as it signals the completion of a start-up phase begun back in June 2003.

In the last two years we have opened three investigations: one is nearing completion, another is well advanced, and the most recent investigation relating to the situation in Darfur is in its early phases. We are also currently analyzing seven other situations.

Moreover, during this period, we have defined our main strategic approach towards conducting our mandate and we have built up an office from scratch, recruiting 150 staff members from 55 countries.

Just as important, but less noticed, the OTP has been working steadily to lay the foundations of its future work by developing its policies, methodologies and standards. Let me briefly mention the digital legal tools produced by the Legal Advisory Section of our Office. We have compiled on a digital platform all relevant information available on the Rome Statute crimes, including international and national legislation, cases, articles, books, preparatory works and a *Case Matrix*, which –among other services- provides on-line commentaries on how to define and prove the offences under the Rome Statute. We are planning to offer access to these digital tools to government ministries, judges and prosecutors, and universities all over the world. Taking into account the complementary nature of the ICC, we hope that these digital legal tools, will not only assist our own work, but will also play a role in harmonizing the development of international criminal law and will support international cooperation with domestic efforts to promote the rule of law. The Case Matrix is already being implemented both within and outside the ICC. It has been translated to Bahasa Indonesian and there have been requests to have it

translated into Khmer for the Extraordinary Chambers in Cambodia, as well as into Mandarin Chinese. The Court will also soon make the digital legal tools, including the Case Matrix, available to the general public on the ICC website. (www.icc-cpi.int)

II. UPDATE OF SITUATIONS

A. Democratic Republic of Congo

In the DRC situation, in light of the scope of the crimes and the number of armed groups, we have been working sequentially. To begin our work, 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 are presently carrying out ongoing investigative activities to the DRC. With the Registry, we have established a field office in Kinshasa, and we have also set up an operational presence in Bunia, Ituri.

We have interviewed witnesses, insiders, and suspects, and collected documents and materials with respect to the crime base and on linkages to persons most responsible as well as military structures. We are also continuing together with the Registry to develop appropriate witness protection arrangements.

Transport, security and logistics remain major challenges. Because of the security and logistical situation in Ituri Region, we remain heavily reliant on the support of the UN peacekeeping presence in the DRC (MONUC). For example, it is 1700 kilometres from Kinshasa to Bunia, so we need MONUC assistance for flight transportation, which is dependent on space availability and frequent flight cancellations. At other times, due to security related concerns and logistical problems such as the lack of available space in MONUC facilities, we have had to postpone or cancel missions. Overall, despite some organizational and technical problems, support on the ground from MONUC has been vital and remains much appreciated. And while we are striving to become as autonomous as possible in the circumstances, in some areas we will simply not be able to operate without such support.

B. Darfur

With regard to the Darfur investigation, I presented a report to the Security Council on 29 June 2005, in which I detailed our activities. The report is available on our website.

Since then, we have recruited our investigation team, including investigators, analysts, and field officers, as well as interpreters in local languages, and the team has 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 are continuing to collect and analyze information and documents, including official documents and reports by intergovernmental and non-governmental organizations.

To date, the team has conducted twelve missions to third countries in order to interview victims and witnesses. We are also grateful for the assistance that the Government of the Republic of Chad has extended in enabling us to conduct missions in its territory.

We are also continuing to analyse national proceedings and admissibility issues.

We have had good interactions with the Government of Sudan, and have had exploratory meetings and received information on their 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, nonetheless, will be essential for an efficient investigation as and when the OTP makes requests for such cooperation.

Pursuant to Security Council Resolution 1593 (2005), we have also initiated discussions with the African Union to develop practical arrangements to facilitate the work of the OTP. Together with the Registry, we have concluded negotiations for a Court-wide cooperation agreement with the AU, which remains to be signed.

C. Uganda

We opened the Uganda investigation in July 2004.

The investigation was carried out by a multinational investigation team, supported by the entire Office. 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. In addition, we took a number of measures to protect the security of potential witnesses, the victims and our own investigators.

On 6 May 2005 we filed an application to Pre-Trial Chamber II for the issuance of warrants of arrest. On 8 July 2005 the Pre-Trial Chamber issued the five arrest warrants. After confirming that the foreseen security measures were in place, on 13 October 2005 the Pre-Trial Chamber decided to unseal the warrants.

The arrest warrants are against five leaders of the LRA who have been charged on counts of crimes against humanity and war crimes. The alleged crimes include rape, murder, enslavement, sexual enslavement and forced enlisting of children. The warrants are against Joseph Kony, leader of the LRA, Vincent Otti, second in command, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen. In the last weeks it has been reported that Ongwen was killed in combat, following an attack on an IDP camp.

As in the other situations, 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 non-governmental organisations.

I have also had meetings in The Hague with leaders of the Lango, Acholi, Teso and Madi communities. We all agreed that we must work together as part of a common effort to achieve justice and reconciliation, the rebuilding of communities and putting an end to violence in Northern Uganda.

The next step is that of arrests. The arrest warrants issued by the ICC will help galvanize international efforts to apprehend the suspects. The responsibility to execute the arrests is that of States Parties and the international community. Current 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.

Now I wish to turn to a number of strategic choices that face the Court and the Assembly of State Parties.

III. STRATEGIC QUESTIONS

A. Selection of Cases

Experience shows that the situations faced by the Court tend to involve large-scale commission of crimes, with an untold numbers of victims as well as many alleged perpetrators. As a global and permanent institution, the ICC will often be confronted with multiple situations of this nature.

As described in our policy paper, which is available on our website, we have developed strategies that to take into account the global nature of the ICC and allowing us to handle concurrently several situations, while respecting our limited resources.

One of the most important elements of this strategy is to focus investigative and prosecutorial efforts and resources on those who bear the greatest responsibility for the most serious crimes. It is simply not feasible to bring charges against all apparent perpetrators.

As such, we will carry out focused investigations and we will prepare for trial a few cases for each situation. Case selection is carried out through careful analysis based on the principles of objectivity and impartiality, and in accordance with the criteria set out in Article 53 of the Rome Statute.

Among the most important of these criteria is gravity. We are currently in the process of refining our methodologies for assessing gravity. In particular, there are several factors that must be considered. The most obvious of these is the number of persons killed – as this tends to be the most reliably reported. However, we will not necessarily limit our investigations to situations where killing has been the predominant crime. We also look at number of victims of other crimes, especially crimes against physical integrity. The impact of the crimes is another important factor.

B. Impartiality

Our investigations must always be carried out impartially. This is not only a professional duty, it is also necessary to maintain legitimacy.

In our view, impartiality does not mean that we must necessarily prosecute all groups in a given situation. Impartiality means that we will objectively apply the same criteria for all, in order to determine whether the high thresholds or the Statute are met and our policy of focusing on the persons most responsible is satisfied.

We are applying this approach in all of our situations.

In the DRC, there are numerous active armed groups allegedly involved in crimes. Groups are unstable, with non-conventional structures, and changing alliances. Given the scale of the situation, we expect to be investigating in the DRC for a long duration. Therefore, we are working sequentially, starting with one or two cases, selected on the basis of gravity, while continuing to develop other cases.

We have focused our investigation through analysis. As noted above, first, we confirmed that the North Eastern region of DRC (including Ituri) was the area with the gravest crimes within our temporal jurisdiction; second, we identified the most serious incidents; and third, we traced responsibilities back to the persons most responsible. Further cases will be developed in the future, on the basis of Statute criteria.

In Uganda, the criterion 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. Our investigations indicated that the crimes committed by the LRA were of dramatically higher gravity. We therefore started with an investigation of the LRA.

At the same time, we have continued to collect information on allegations concerning all other groups, to determine whether other crimes meet the stringent thresholds of the Statute and our policy are met.

The selection of cases for the situation in Darfur is being developed along the same basis.

C. Selection of Situations

I mentioned the issue of selecting *cases* within a situation. The ICC faces the additional task of selecting which *situations* to investigate. As you know, situations may be referred to the Prosecutor by States Parties or by the Security Council, or the Prosecutor may initiate an investigation on his own initiative based on information received.

In all cases, the Prosecutor is required to analyse the factors set forth in the Statute (crimes, admissibility and interests of justice) in order to determine whether there is a **reasonable basis to start an investigation**.

We have been developing and refining our methodologies for each of these factors to ensure consistent and objective analysis. We will be making further information on our analytical approach available soon on our website.

The selection of situations raises an additional question which goes to the very *model* of the ICC. The Court is already operating in three situations, based on two State referrals and one Security Council referral. In addition, we are currently analyzing seven other situations of concern. These include a State referral from the Central African Republic, and a declaration of acceptance of jurisdiction from the Cote d'Ivoire.

Must the Prosecutor initiate an investigation in all situations that appear to fall within the jurisdiction of the Court? Or, should the Prosecutor select amongst them the most grave and urgent situations within the limits of his resources?

The answer to this question will have a dramatic impact on the size of the Court, its impact, its respect for different traditions, its budget and its planning.

A case driven approach would imply that the Court should act in every situation involving crimes that appear to fall within our jurisdiction. As a result, the Court would take on multiple situations, including those of comparatively lesser gravity, and would thereby expand its reach, reducing the role of national states. Increasing demands for cooperation and intervention in less grave situations which may fail to reflect the concern of the international community as a whole -might lead to ICC 'fatigue' and a diminishing of support.

A Court accepting all situations would also need a much larger budget. Moreover, it would not be possible to provide steady and predictable budgetary projections, since future resource needs would depend on external circumstances.

Crimes within our jurisdiction are by definition grave crimes of international concern. But gravity in our Statute is not only a characteristic of the crime, but also an admissibility factor,

which seems to reflect the wish of our founders that the ICC should focus on the gravest situations in the world.

A resource driven approach, with the capacity to take only two or three situations each year would require the Court to focus on the worst crimes. This would likely increase the international consensus towards their prosecutions. This approach would also enable the Court to have more efficiency. A resource driven approach, however, would mean that situations involving hundreds of crimes, such as killings and rapes, may have to be set aside in the interest of focusing on a competing situation involving thousands of killings and rapes. Many could feel that justice is not served if hundred of deaths are not enough to warrant the intervention of the Court

Determining the correct model is a legal, financial and strategic question that will require dialogue between many actors. It has a *legal* dimension, namely the interpretation of Article 53, and therefore involves the OTP and ultimately the judges. It has a *budgetary* dimension and therefore involves the States Parties. It also has a *strategic* dimension - what is the desired scope and role of the Court? - and therefore involves all stakeholders. The Court is currently preparing a court capacity model for the next five years in order to lay the groundwork for this discussion in the coming year. The report will explain the correlation between the different factors for the Court, and will indicate, for example, how many investigation teams will produce how many trials, and will require how many staff in the Court room, and will require how many number of judges. It is the hope that this will assist States in defining the capacity of the Court and the resolution of the strategic considerations outlined above. Until then, States Parties might be well placed to begin reflecting on these important matters, since they will shape the form and growth of our institution.