

Ms Fatou Bensouda, Deputy Prosecutor of the International Criminal Court (ICC), 6 February 2008, Brussels

JUSTICE, RECONCILIATION AND THE ROLE OF THE ICC

Ladies and Gentlemen,

I. Introduction: It is a pleasure to be here today to address you on justice, peace, reconciliation and, especially, on the role of the International Criminal Court where conflict-resolution initiatives are ongoing.

The Rome Statute which established the Court entered into force in July 2002. This was a high point following a concerted effort by the nations of the world to address impunity at the international level. The international community played a significant role in the negotiation of a comprehensive treaty which laid the foundations for an effective international strategy for the prosecution of the most serious crimes of international concern. Very significantly, the establishment of the ICC (and the creation of the *ad hoc* tribunals and special courts before it) also signalled the conviction of the international community that **justice is an intrinsic component of durable peace**. I will discuss this further during the course of my remarks but let me

first outline how the Court functions as well as the recent developments in the situations and cases under investigation.

II. How the ICC works: The ICC functions differently from national criminal courts in a number of important respects:

- The most important of these is that it is complementary to national criminal jurisdictions. In other words, the Court can only intervene where the relevant national system has been unwilling or unable to investigate or prosecute. **This is a fundamental principle upon which the Rome system is based and which recognises that the primary responsibility to investigate and prosecute lies with states.**
- In addition, the category of crimes over which the Court may exercise jurisdiction is narrower. The Court currently has the power to investigate the alleged commission of war crimes, crimes against humanity and genocide. Once the States Parties to the Rome Statute have agreed on a definition of aggression, and on the conditions under which the Court may exercise jurisdiction in relation to this crime, the category of statutory crimes will be extended accordingly.

III. Summary of investigations:

(i) **DEMOCRATIC REPUBLIC OF THE CONGO:** The Office of the Prosecutor has completed its first investigation into crimes committed in the Ituri region of the DRC. The investigation resulted in the surrender, in March 2006, of Thomas Lubanga Dyilo, the leader of the most dangerous militia in Ituri, to the Court. Mr. Lubanga is accused of enlisting, conscripting and using child soldiers, and his trial will commence very soon.

As you know, the use of child soldiers has gone largely unrecognised and unpunished for far too long. The *Lubanga* case is of historic magnitude in the fight against impunity for these crimes. Each year, these crimes affect thousands of children, whose lives and futures have been destroyed, and their families and communities devastated. This indictment is part of a broader process of enforcing accountability and raising awareness which we intend to continue.

We have also completed a second investigation into crimes committed by another Ituri armed group. The OTP presented its evidence to the Judges in the summer of 2007 and a sealed arrest warrant was issued. On 17 October 2007, the Congolese authorities surrendered and transferred Mr. Germain Katanga, alleged commander of the *Force de résistance patriotique en Ituri*, to the Court. Mr. Katanga is alleged to have committed

war crimes and crimes against humanity. His name is forever associated with the name of Bogoro, a village which disappeared from the map of Congo after the attack by Germain Katanga's forces. We are currently in the process of selecting a third case for investigation in DRC. There are many possible options, including the allegations of sexual violence occurring in the eastern part of the country, the Kivus in particular. This will not be our last case in the DRC.

(ii) **DARFUR:** The intervention of the Court was precipitated by a referral of the situation to the Prosecutor by the UN Security Council in March 2005. Following an analysis of the crimes alleged to have been committed, an investigation was initiated in June 2005. The evidence we collected has unveiled an organised system of attacks against the civilian population coordinated by Ahmad Harun, then Minister of State for the Interior, and presently the Minister of State for Humanitarian Affairs and chair of the commission investigating human rights abuses in Darfur. These attacks were carried out by a number of actors, including a *janjaweed*/militia leader, Ali Kushayb. After the Prosecutor presented evidence of the complicity of Ali Kushayb and Ahmad Harun to the Court, warrants for their arrest were issued in April 2007. These arrest warrants have not yet been executed.

(iii) *UGANDA*: In Northern Uganda, the evidence showed that, during the course of a protracted and continuing insurgency, the top commanders of the Lord's Resistance Army (LRA) were personally responsible for conscripting and enslaving children, slaughtering their families and forcing the displacement of millions of civilians. On that basis, the Prosecutor submitted an application to the judges for warrants for the arrest of members of the LRA's senior command, including their leader, Joseph Kony. One indicted individual has subsequently died, but we continue to cooperate with our international partners to secure the arrest of the four remaining suspects.

(iv) *CENTRAL AFRICAN REPUBLIC*: Finally, the Prosecutor's decision to open an investigation into the situation in the Central African Republic situation in May 2007 was a major step in the judicial recognition of the significant impact of sexual crimes and gender violence. **This was the first time in the international criminal system that an investigation was opened in which allegations of sexual crimes far outnumber alleged killings.** As the Prosecutor recently stated, the allegations of sexual crimes are detailed and substantiated. The information we now have suggests that the rape of civilians was committed in numbers that cannot be ignored under international law.

IV. Challenges faced by the Court: The Court faces a number of significant challenges as it conducts its investigations. These include the challenge of conducting investigations in situations of protracted instability, the need to secure international cooperation at the political and operational levels to facilitate the Court's work and the challenge of applying the law as it is laid down in the Rome Statute where the parties concerned are engaged in conflict-resolution processes.

For the purposes of our discussion today, I would like to focus on the last of these:

(i) Peace and justice: It is important to bear in mind that the crimes which the Court investigates will often have been committed during an armed conflict. The Court has, then, to consider the implications that any ongoing conflict resolution process may have on its approach to an investigation.

In my view, the international community settled the peace-justice debate in Rome; the international community effectively decided that justice would always be a component of any conflict-resolution process by holding to account all those who bear the greatest responsibility for serious crimes. The only issue which is open for discussion now is how justice and peace

should work together, and this is certainly an issue with which the Court is grappling.

(ii) The Role of the Court: Having said that, I would like to discuss specifically the role of the ICC and its mandate is to dispense justice for the victims of the crimes which fall within its jurisdiction. It is now clear, if there was ever any doubt, that victims are entitled to both justice and peace. What is important is that justice should be sought without undermining ongoing peace processes. Consequently, our objective is to find a solution which is compatible with the Rome Statute and, to the greatest extent possible, with local and traditional cultures and national laws so that accountability is ensured and justice and peace work effectively together.

(iii) Reconciliation: One of the instruments used by governments in the past for the conclusion of successful peace negotiations was the provision of immunity, as part of amnesty agreements, for persons accused of having committed serious crimes during the conflict. Such arrangements are not binding on the ICC. Indeed, amnesties and impunity for those bearing the greatest responsibility for serious crimes are not consistent with the Statute and undermine the Rome system. In this context, it is frequently argued that the ICC is an obstacle to peace. In particular, it is pointed out that it is precisely those bearing the greatest degree of responsibility who will normally

be key players in peace negotiations. However, I would suggest that the Court is not an obstacle to peace at all; on the contrary, **the delivery of justice creates conditions which are conducive to reconciliation, and reconciliation is a major building block for a sustainable peace.**

- By ensuring that the most responsible people are held individually responsible for the atrocities they committed, the ICC can prevent entire groups –national, ethnic or religious groups – from being stigmatised by the rest of society. As such, the ICC can help to ensure that individuals do not resort to acts of revenge in their search for justice.
- Neutralising major criminals will prevent them from sustaining a climate of violence and hatred which will inevitably lead to future conflicts.
- Victims have also consistently stated that a climate of confidence may be difficult to establish if perpetrators are not brought to justice. By offering victims an objective, solemn and public forum, the ICC offers a solid basis on which a ‘new’ society can take shape.

(iv) Peace negotiations: The intervention of the Court also presents new opportunities that can be maximised in the context of negotiations:

- **First, the intervention of the Court contributes to focusing the attention of the world on the horrific crimes committed.** The Court has played a key role in focusing international attention on the tragedy in Northern Uganda. It has become clear to those observing the events in Uganda that, although it seems that the conflict has all but disappeared from international awareness, serious crimes continue to be committed on a large scale.
- **Secondly, the issuing of arrest warrants, or indeed the threat of the Court's intervention, can help to bring belligerents to the negotiating table.** In N. Uganda, for instance, as a result of the warrants issued against the LRA's senior commanders, the LRA felt able to take part in the peace process. That being said, warrants are not mere tools to bring parties to the negotiating table; there must be follow-through in N. Uganda and the solution agreed upon must, in the end, to be compatible with the Rome Statute.

- **Third, the Court can help to marginalise those who bear the greatest responsibility for serious crimes and exclude them from the negotiating frame.** This happened, for instance in the case of the UN tribunal set up to deal with persons suspected of committing war crimes and other serious crimes in the former Yugoslavia. Two of the individuals against whom warrants were issued by the ICTY (Generals Mladic and Karadzic) were effectively marginalised during the peace process which resulted in the Dayton peace accords. Consequently, the Court's involvement may, in some circumstances, eliminate criminals from the peace process which, in turn, can enhance the legitimacy of the negotiations themselves.

V. Conclusion

Accepting that some may feel that the ICC's intervention may have both positive and negative consequences, the challenge is to try to take advantage of the opportunities created by the Rome system because what we have now is a legal regime which has been widely accepted within the international community. The Rome Statute establishes a new framework where impunity is no longer an acceptable option. The Court will apply the law, but it depends on other partners to contribute their efforts to a holistic approach to justice and to conflict resolution. In doing so impartially and independently, the Court

aims to show that peace and justice (far from being fundamentally incompatible) are, in fact, mutually reinforcing.

Thank you.