

The Powers and Role of the Prosecutor of the International Criminal Court in the Global Fight against Impunity

CHRISTOPHER KEITH HALL*

Abstract

On 16 June 2003, the first Prosecutor of the newly established International Criminal Court (Court), Luis Moreno Ocampo, was inaugurated. He faces enormous challenges ahead in the short term, including the need to increase the number of states ratifying and implementing the Rome Statute of the International Criminal Court and to demonstrate that criticisms of the Court and his powers made by the current administration of the United States of America in the course of its campaign to undermine the Court are unwarranted. This article describes the background to the establishment of a permanent independent Prosecutor within the Court, able to open, subject to extensive statutory and judicial constraints, investigations on the Prosecutor's own initiative. It then describes the statutory provisions establishing the post and defining the powers and duties of the Prosecutor. The article concludes with a discussion of the imaginative way in which he is setting up the Office of the Prosecutor and his innovative overall strategy as a leader in the global fight against impunity. As the Prosecutor demonstrates his independence, impartiality, fairness, and effectiveness in conducting trials, and his ability to inspire states to fulfil their obligations to complement his efforts by investigating and prosecuting these crimes themselves, the long-term prospects for the Court will become increasingly promising.

Key words

complementarity; international courts; International Criminal Court

I. INTRODUCTION

A historic event in the development of international law and the fight against impunity occurred on 16 June 2003, when Luis Moreno Ocampo was inaugurated as the first Prosecutor of the International Criminal Court (Court). He had been elected by consensus by the Assembly of States Parties of the International Criminal Court on 21 April 2003 at the second resumption of its first session. The Prosecutor is an Argentine lawyer who was Deputy Prosecutor in the prosecution team from 1984 to 1985 in the trial of members of the former military junta based on command responsibility in 700 of the thousands of cases of kidnapping, murder and torture and involved in other prosecutions of persons accused of committing crimes under national law in Argentina that amounted to crimes against humanity. He was president of the Latin American and Caribbean section of Transparency International,

* Legal Adviser, International Justice Project, Amnesty International. This article covers developments to 1 January 2004.

a non-governmental organization that seeks to reduce corruption in international business.¹ His inauguration took place fewer than five years after a diplomatic conference adopted the Rome Statute of the International Criminal Court by 120 votes in favour to seven against and with 21 abstentions.² The 18 judges had been inaugurated four months earlier, and the Registrar was appointed by the judges on 24 June 2003, shortly after the Prosecutor took office.

This article identifies some of the most serious challenges that the Prosecutor faces. Then it discusses the background to the establishment of the post of a permanent independent prosecutor within the Court, able to initiate, subject to extensive statutory and judicial constraints, investigations on his or her own authority. It then describes the statutory provisions establishing the post and the Office of the Prosecutor and gives an overview of the powers and duties of the Prosecutor. It concludes with a discussion of the imaginative way in which the Prosecutor is setting up the Office of the Prosecutor and his innovative overall strategy.

As described below, the Prosecutor has articulated in his initial speeches and demonstrated in his actions so far a dynamic approach to the development of the Office of the Prosecutor, as well as creative ways of using his limited powers under the Rome Statute. During his first months in office he has been conducting broad consultations, recruiting core senior staff and developing principles and internal regulations to guide the Office of the Prosecutor. He has also announced the first preliminary examination of a situation and secured public assurances of co-operation from the state where the crimes have been occurring. He has carved out a leading role in the global fight against impunity. In this role, he has been trying to inspire, and, where necessary, cajole national police, prosecutors and investigating judges and members of parliament to fulfil their duties to ensure that all those responsible for genocide, crimes against humanity, and war crimes are brought to justice.

The Prosecutor faces enormous challenges in the short term, and these challenges have, to some extent, shaped the organization of the Office of the Prosecutor and his prosecution strategy. Although 92 states had, a little over five years since the diplomatic conference, become parties to the Rome Statute (as of 1 January 2004) – a remarkable pace of ratifications for a treaty of such importance – more than half of all states, including such politically significant ones as China, India, Indonesia, Israel, Japan, Mexico, Pakistan, the Philippines, Russia, and the United States, have not yet become parties. As of that date, only a dozen or so states parties were known to have enacted implementing legislation for the Rome Statute addressing both their co-operation and complementarity obligations, and much of that legislation is flawed in certain respects.³ In the absence of implementing legislation, it will

-
1. His full *curriculum vitae* and all other Court documents and expert papers mentioned in this article are available at: <http://icc-cpi.int>.
 2. Rome Statute, UN Doc. A/CONF.183/9*, 17 July 1998, as corrected by UN Doc. CN577.1998.TREATIES-8, 10 Nov. 1998 and UN Doc. CN604.1999.TREATIES-18, 12 July 1999. The Rome Statute and all Assembly of States Parties documents mentioned in this article are available at <http://un.org/law/icc/index/html>.
 3. Eleven other states parties are known to have enacted legislation addressing only their co-operation or their complementarity obligations. These obligations are spelled out in Amnesty International, 'The

be difficult and often impossible for states parties to fulfil their complementarity obligations to investigate and prosecute genocide, crimes against humanity, and war crimes. It will also be difficult, and often impossible, for them to fulfil their obligations under Article 86 of the Rome Statute to co-operate, including complying with requests to arrest and surrender accused persons, take testimony, provide other evidence and trace, freeze, seize and forfeit assets for reparations to victims. Only four states had become parties to the Agreement on the Privileges and Immunities of the International Criminal Court, an essential safeguard for the work of the Office of the Prosecutor outside the seat of the Court in The Hague and an urgent priority in protecting investigators, victims, witnesses, and evidence during preliminary examinations and investigations.⁴ None of the states is known to have enacted legislation implementing the Agreement. States parties have been slow to pay their assessed contributions. Although the slow rate of payment has not had an immediate impact on the activities of the Court so far because it has not needed to use the full amount of its regular budget in 2002 or 2003, these delays could create problems in 2004 as the Court becomes fully operational. As described below, the Office of the Prosecutor contains a unit with responsibility to conduct a dialogue with states on a range of subjects, which are likely to include ratification, implementation, and prompt payment of assessed contributions.

Regrettably, the current administration of the United States has been hostile to the Court. Under intense pressure from the United States since 6 May 2002, including threats to veto extensions of the mandates of all peace-keeping operations of the United Nations, the UN Security Council has adopted a series of resolutions seeking to prevent the Court from exercising its jurisdiction over current or former officials or personnel from a non-state party contributing to a UN-established or authorized peace-keeping operation for acts or omissions relating to that operation.⁵ According to confidential, but reliable, sources, the United States is now seeking to prevent approval by the UN General Assembly of the Relationship Agreement between the Court and the United Nations or to weaken the Relationship Agreement, and to

International Criminal Court: Checklist for Effective Implementation', AI Index: IOR 40/11/00, July 2002. Copies of draft and enacted implementing legislation, as well as commentaries on that legislation, can be found at: <http://www.amnesty.org/icc>.

4. Agreement on the Privileges and Immunities of the International Criminal Court, UN Doc. ICC-ASP/1/3 (2002), Part II.E.
5. On 12 July 2002, the Security Council adopted Resolution 1422 (2002), which purports to be consistent with Art. 16 of the Rome Statute (permitting the Security Council, when acting pursuant to Chapter VII of the Charter of the United Nations, to request the Court to defer an investigation or prosecution for one year). It requested the Court to defer any investigation or prosecution of current or former officials or personnel from non-states parties for conduct relating to a UN-established or authorized operation for one year. On 12 June 2003, the Security Council renewed this request in Resolution 1487 (2003). Both resolutions were severely criticized by a large number of states and others as unlawful; three states abstained on the renewal. See UN Doc. S/PV.4568, and Resumption 1, 10 July 2002; UN Doc. S/PV.4772, 12 June 2003; Amnesty International, 'International Criminal Court: The Unlawful Attempt by the Security Council to Give US Citizens Permanent Impunity from International Justice', AI Index: IOR 40/006/2003, May 2003. The Security Council gave in to similar US pressure on 1 Aug. 2003, as a small contingent of US Marines was waiting offshore while the humanitarian crisis deepened in Liberia, when it adopted Resolution 1497 (2003) that purported to allocate exclusive jurisdiction over genocide, crimes against humanity and war crimes committed by nationals of non-states parties contributing forces to the UN peace-keeping operation in Liberia to the courts of those states. Three states abstained and others criticized the resolution. See UN Doc. S/PV.4803, 1 Aug. 2003.

prohibit UN peace-keepers and other parts of the organization from co-operating with the Court.⁶ Rather than expending his energies in responding directly to the United States and other critics of the Court, the Prosecutor appears to have decided that the best answer to unfounded fears about the Court will be effective, fair, independent and impartial investigations and prosecutions.

The Court's resources are limited and it will only be able to exercise jurisdiction when states are unwilling or unable genuinely to investigate or prosecute crimes relating to a few situations, thus risking the creation of an enormous impunity gap, unless the Prosecutor can persuade states to fulfil their obligations under international law. Even in cases where the Prosecutor exercises jurisdiction, he will have to use a complex and cumbersome treaty and regulatory scheme and devise creative ways in co-operation with other organs of the Court to make them work effectively and expeditiously. As described below, the Prosecutor has taken the first steps to prevent the emergence of an impunity gap and to develop innovative methods to ensure that the Court will be a success.

2. THE ORIGINS OF THE POST OF AN INDEPENDENT PERMANENT PROSECUTOR

Most of the early proposals for a permanent international criminal court, from the first proposal by Gustave Moynier in 1872 to the Second World War, did not envisage a permanent prosecutor, but prosecutions by ad hoc prosecutors employed by states.⁷ Agreement on the necessity of a permanent prosecutor within the Court was not reached until after the establishment in May 1993 of the International Criminal Tribunal for the former Yugoslavia (ICTY), which provided for an independent Prosecutor who was able to set up investigations on his or her own initiative or on the basis of information from any source, and who would then, if it was warranted, prepare an indictment for approval by the trial chamber.⁸

Although the 1994 International Law Commission (ILC) draft statute provided for a permanent prosecutor, it envisaged a passive prosecutor acting solely on the basis of referrals by the Security Council or states parties, and it rejected an independent prosecutor along the lines of the ICTY model able to initiate investigations *proprio motu* (on his or her own initiative) based on information from any source. As James Crawford, who played a major role in writing the ILC draft, subsequently explained, it was feared that this model would have been rejected by states.⁹ Indeed,

6. Draft Relationship Agreement between the Court and the United Nations, UN Doc. ICC-ASP/1/3 (2002), Part II.G.

7. See G. Moynier, 'Note sur la création d'une institution judiciaire internationale propre à prévenir et à réprimer les infractions à la Convention de Genève', (1972) 11 *Bulletin international des Sociétés de secours aux militaires blessés*, Comité international, 129–31; Memorandum by the Secretary-General, Historical Survey of the Question of International Criminal Jurisdiction, UN Doc. A/CN.4/7/Rev.1 (1949).

8. Statute of the Tribunal, Annexed to Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808 (1993), UN Doc. S/25704, 3 May 1993, Arts. 16, 18 and 19.

9. Although one member of the ILC suggested that the Prosecutor should have the authority to exercise *proprio motu* powers, 'other members felt that the investigation and prosecution of the crimes covered by the Statute should not be undertaken in the absence of the support of a State or the Security Council, at least not at the present stage of development of the international legal system'. Report of the International Law Commission

many states, particularly the United States, expressed fears that a prosecutor with such powers would use the position to initiate investigations and prosecutions to further his or her political aims. It was only after intense lobbying by the group of like-minded governments and approximately eight hundred non-governmental organizations in the Coalition for an International Criminal Court (CICC), who argued that the manner in which the Prosecutors for the ICTY and (after November 1994) for the International Criminal Tribunal for Rwanda (ICTR) had conducted themselves demonstrated that such fears were groundless, that the 1998 diplomatic conference provided for an independent prosecutor with powers *proprio motu* to initiate investigations.¹⁰ However, in an attempt to quell such fears, these powers are subject to judicial approval, a complex and potentially lengthy series of state challenges and, in certain instances, to deferral by the Security Council, thus making political abuse by the Prosecutor all but impossible. In addition, as noted below, the conduct of the Prosecutor at all stages of the proceedings is subject to extensive statutory and judicial constraints, and the Prosecutor can be removed by the Assembly of States Parties for serious misconduct or breach of duties.

2.1. A brief overview of the provisions in the Rome Statute establishing the Prosecutor and the Office of the Prosecutor

The relevant provisions in the Rome Statute concerning the position of the Prosecutor and the nature of the Office of the Prosecutor are not particularly revealing and leave considerable scope for the Prosecutor to develop an effective role in the implementation of the Rome Statute and to shape the structure and functions of the Office of the Prosecutor.¹¹ The Prosecutor heads the Office of the Prosecutor, has 'full authority over the management and administration of the Office, including the staff, facilities and other resources thereof', and can be assisted by one or more Deputy Prosecutors.¹² The Prosecutor and Deputy Prosecutors must 'be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases', as well as being fluent in at least one of the working languages of the Court (English and French).¹³ The Prosecutor is elected in a secret ballot by an absolute majority of the members of the Assembly of States Parties, and each Deputy Prosecutor is elected in the same way from a list of three persons nominated by the Prosecutor.¹⁴ The Office of the Prosecutor is required to act independently as one of the six organs of the Court (the other five being the Presidency; the Pre-Trial, Trial and Appeals Divisions; and the Registry), and members of the Office 'shall not seek or act on instructions from any external

on the work of its forty-sixth session, 2 May–22 July 1994, 49 UN GAOR Supp. (No. 10), at 90, UN Doc. A/49/10 (1994).

10. For the drafting history of the provisions of the Rome Statute concerning the Prosecutor, see S. A. Fernández de Gurmendi, 'The Role of the International Prosecutor', in R. S. Lee, *The International Criminal Court: The Making of the Rome Statute – Issues – Negotiations – Results* (1999), 175.
11. For an overview of the statutory powers of the Prosecutor, written before the entry into force of the Rome Statute, see G. Turone, 'Powers and Duties of the Prosecutor', in A. Cassese, P. Gaeta, and J. R. W. D. Jones (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (2002), 1137.
12. Rome Statute, Art. 42(2).
13. *Ibid.*, Art. 42(3).
14. *Ibid.*, Art. 42(4).

source'.¹⁵ The Prosecutor or a Deputy Prosecutor can be removed if 'found to have committed serious misconduct or a serious breach of his or her duties under [the Rome] Statute' or he or she '[i]s unable to exercise the functions required by [the Rome] Statute' by an absolute majority of the Assembly of States Parties.¹⁶

The Prosecutor has the power to appoint such qualified staff as may be required, including investigators.¹⁷ When employing such staff the Prosecutor 'shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, *mutatis mutandis*, to the criteria set forth in article 36, paragraph 8', which requires that in the selection of judges states parties shall take into account the need for the representation of the principal legal systems of the world, equitable geographic representation and a fair representation of females and males.¹⁸ These statutory provisions were reinforced by Resolution 10, adopted by the Assembly of States Parties at its first session, which annexed guidelines for the selection and appointment of staff pending adoption of the Staff Regulations at the Assembly's second session.¹⁹ The Prosecutor may, in exceptional circumstances, employ gratis personnel offered by states parties, intergovernmental organizations and non-governmental organizations in accordance with guidelines established by the Assembly of States Parties.²⁰ The Prosecutor is also required to appoint 'advisers with legal expertise on specific issues, including but not limited to, sexual and gender violence and violence against children'.²¹

3. EXPRESS STATUTORY DUTIES AND POWERS

The provisions of the Rome Statute concerning the Prosecutor's duties and powers sketched out below are considerably more detailed than those establishing the post and the Office of the Prosecutor, although there are a number of areas of ambiguity that will only be clarified through experience, such as the division of labour between the Prosecutor and the Pre-Trial Chamber during investigations. The statutory provisions have been supplemented by certain provisions in a number of other instruments drafted by the Preparatory Commission for the International Criminal Court and adopted by the Assembly of States Parties, in particular, the Rules of Evidence and Procedure.²² At each of the stages discussed below – preliminary examination, investigation, and decisions concerning which individuals to prosecute and which charges to pursue – the Prosecutor will face a number of

15. *Ibid.*, Art. 42(1). In addition, neither the Prosecutor nor the Deputy Prosecutors may 'engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence' (*ibid.*, Art. 42(5)), and they may not 'participate in any matter in which their impartiality might reasonably be doubted on any ground' (Art. 42(7)).

16. *Ibid.*, Art. 46(1) and (2). The decision to remove either official is made by an absolute majority of the Assembly of States Parties, but in the case of the Deputy Prosecutor only upon recommendation of the Prosecutor, Art. 46(2)(b) and (c).

17. *Ibid.*, Art. 44(1).

18. *Ibid.*, Arts. 44(2), 36(8).

19. UN Doc. ICC-ASP/1/Res.10, 9 Sept. 2002.

20. Rome Statute, Art. 44(4).

21. *Ibid.*, Art. 42(9).

22. UN Doc. ICC-ASP/1/3 (2002), Part II.A.

challenges that are different from those that national prosecutors face when exercising their discretion. Developing guidelines for the exercise of that discretion will be a priority.²³

3.1. Initiation of cases

A case can be initiated by the Prosecutor in one of three ways. A state party may refer a situation to the Prosecutor in which one or more crimes within the Court's jurisdiction appear to have been committed, and the Security Council can refer such a situation when it is acting under Chapter VII of the Charter of the United Nations.²⁴ In either case, after determining that it is warranted, the Prosecutor can then commence an investigation without seeking judicial approval. In addition, the Prosecutor may initiate – subject to judicial approval – an investigation *proprio motu* on the basis of information in his or her possession, after first analysing the seriousness of the information.²⁵ In conducting this analysis, the Prosecutor may seek additional information from states, UN organs, intergovernmental or non-governmental organizations or other reliable sources he or she deems appropriate and may receive written or oral testimony at the seat of the Court.²⁶ Then, if the Prosecutor concludes that there is a reasonable basis for an investigation, he or she must submit a request to the Pre-Trial Chamber for authorization of an investigation, together with any supporting material collected.²⁷ If the Pre-Trial Chamber considers that there is a reasonable basis for an investigation and that the case appears to fall within the Court's jurisdiction, it shall authorize the investigation.²⁸

3.2. Conducting an investigation

The Prosecutor then faces a number of hurdles to meet in conducting an investigation. First, he or she may have to address a series of challenges to admissibility of the case under Article 18 (if a state referral or a *proprio motu* case) by states claiming that they were investigating or prosecuting the case or had done so, or challenges to jurisdiction or admissibility under Article 19 by the accused or a state claiming jurisdiction, leading to a suspension of the investigation (when the challenge is by a state) pending a determination, save for certain exceptional measures authorized by the Pre-Trial Chamber to preserve evidence. These two articles could be abused by states intent on delaying or preventing investigations, and it is likely that the Prosecutor will seek to persuade the Pre-Trial Chamber to develop speedy and efficient procedures to resolve such challenges. Second, the Security Council, acting under Chapter VII of the UN Charter, could make a request pursuant to Article 16 to defer an investigation or prosecution for one year, a request that can be renewed.

23. For a discussion of some of these issues, see the papers submitted by experts to the Prosecutor and Allison Marston Danner, *Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court*, 97 Am. J. Int'l L. 510 (2003).

24. Rome Statute, Arts. 13(a) and (b) and 14.

25. *Ibid.*, Art. 15(1) and (2).

26. *Ibid.*, Art. 15(2).

27. *Ibid.*, Art. 15(3).

28. *Ibid.*, Art. 15(4).

Third, assuming that the investigation can go forward, the Prosecutor is then heavily dependent on state authorities in order to carry out an investigation, since there is no international police force. States parties are obliged to provide a wide range of different types of co-operation under Part 9, but there are a number of provisions in that part that could permit national authorities to delay or obstruct co-operation.²⁹ In addition, although the use of national authorities will reduce some costs, for certain steps it would be more efficient for the Office of the Prosecutor investigation team familiar with the case to carry them out and, particularly in states where the crimes occurred, victims and witnesses may be unwilling to co-operate with national authorities and there may be concerns about the security of the investigation.

The Prosecutor has three basic duties with regard to investigations: first, establishing the truth, including investigating incriminating and exonerating evidence; second, conducting the investigation effectively; and, third, respecting the interests of victims and witnesses and fully respecting the rights of persons under the Rome Statute.³⁰ A number of other provisions noted below confirm that the duties with respect to establishing the truth and respect for victims and other persons apply at all stages of the proceedings. For example, the Prosecutor is required to ‘take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses’ and to do so ‘particularly during the investigation and prosecution of . . . crimes [of sexual or gender violence or violence against children]’.³¹ Thus in this respect the Prosecutor plays a role more similar to that of investigating judges and prosecutors in most civil-law systems than to that of a prosecutor in a common law one.

The Prosecutor may conduct investigations on the territory of a state, with its consent, in accordance with Part 9, and without a state party’s consent when the Pre-Trial Chamber has determined that the state is unable to co-operate due to the unavailability of any authority or component of its judicial system.³² The Rome Statute lists a number of other powers with respect to investigations, including powers with respect to the collection and examination of evidence, questioning of persons, co-operation agreements with states, intergovernmental organizations, and persons, and agreements and other measures concerning confidentiality.³³ As in most common-law systems, the Prosecutor is largely in charge of conducting the investigation and marshalling evidence to be presented at trial rather than developing a dossier. However, the Pre-Trial Chamber can perform a number of functions during the investigation that are similar to those performed by an investigating judge in

29. See, e.g., *ibid.*, Arts. 89 (Surrender of Persons to the Court), 90 (Competing Requests), 94 (Postponement of Execution of a Request in Respect of Ongoing Investigation or Prosecution), 95 (Postponement of Execution of a Request in Respect of an Admissibility Challenge), 98 (Co-operation with Respect to Waiver of Immunity and Consent to Surrender) and 99 (Execution of Requests under Articles 93 and 96).

30. *Ibid.*, Art. 54(1). For a description of the Prosecutor’s powers and duties concerning investigations, see M. Bergsmo and P. Kruger, ‘Article 54’, in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers’ Notes, Article by Article* (1999), 715.

31. Rome Statute, Art. 68(1). See also Art. 68(4) and (5).

32. *Ibid.*, Arts. 54(2), 57(3)(d).

33. *Ibid.*, Art. 54(3).

many civil law systems and to some extent can control the powers of the Prosecutor. It remains to be seen how harmoniously and efficiently the Prosecutor and the Pre-Trial Chamber will be able to work together during this phase of proceedings. For example, the Prosecutor can call upon the Pre-Trial Chamber to take measures to protect the efficiency and integrity of proceedings and the rights of the defence when there is a unique investigative opportunity to take a statement from a witness or to examine, collect, or test evidence that may not be available at trial.³⁴ If the Prosecutor has not done so, but the Pre-Trial Chamber considers that such measures are essential for the defence, it can take such measures itself, but the Prosecutor can appeal against this decision.³⁵

3.3. Arrest, confirmation of charges, trial, appeals, and revision

At any time after the initiation of an investigation, the Prosecutor may apply to the Pre-Trial Chamber to issue an arrest warrant, which it must issue if it is satisfied that a person has committed a crime within the Court's jurisdiction and an arrest is necessary to ensure presence at trial, avoid obstruction or danger to the investigation or court proceedings, or prevent the commission of crime; alternatively, the Prosecutor may apply for the issuance of a summons if that is sufficient to ensure appearance at trial.³⁶ After arrest by national authorities and surrender of the arrested person to the Court, the Prosecutor must move expeditiously; if the arrested person is detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor, the Pre-Trial Chamber can release the person.³⁷ Within a reasonable time after surrender or a voluntary appearance, the Pre-Trial Chamber will hold a hearing, at which the arrested or summoned person is normally present, to confirm the charges on which the Prosecutor plans to seek trial (a similar hearing is required for amendment of charges).³⁸ Although there is no formal dossier under the Rome Statute, the Prosecutor is required at the hearing to support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged (although the Prosecutor can rely on documentary evidence or summary evidence), and the Pre-Trial Chamber can request the Prosecutor to provide further evidence to support a charge.³⁹

Once the charges and a trial chamber have been confirmed, the Prosecutor plays the major role in preparing the case for trial and proving the case against the accused beyond a reasonable doubt, as in an adversarial system, but the Trial Chamber and victims can also play a significant role, as in many civil-law systems, thus potentially making the preparation and presentation of the case by the Prosecutor more complex.⁴⁰ For example, even if the Prosecutor and the accused agree appropriate penalties for each charge in return for an admission of guilt, the Trial Chamber,

34. *Ibid.*, Art. 56(1).

35. *Ibid.*, Art. 56(3).

36. *Ibid.*, Art. 58(1) and (7).

37. *Ibid.*, Art. 60(4).

38. *Ibid.*, Art. 61(1), (2) and (7).

39. *Ibid.*, Art. 61(5) and (7)(c)(i).

40. *Ibid.*, Art. 66.

which is not bound by such an agreement, can require the production of additional evidence before accepting this admission or it can decline to accept it and order that a trial take place.⁴¹ In addition, the Rome Statute and the Rules permit the Trial Chamber to order the Prosecutor and, to a considerable extent, the defence, to disclose documents and other information before trial.⁴² The Trial Chamber has extensive powers to control the conduct and order of proceedings.⁴³ In particular, on its own initiative it may '[r]equire the attendance and testimony of witnesses and production of other evidence', an express power which was included at the insistence of civil-law countries which wanted the Trial Chamber to exercise a degree of control over the proceedings similar to that of their domestic courts to ensure that the presentation of the cases by the parties does not impede the emergence of the truth.⁴⁴ When the personal interests of victims are affected, the Court is required to 'permit their views and concerns to be presented at stages of the proceedings determined appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial'.⁴⁵

As in many civil law systems, the Prosecutor can appeal against both a conviction and an acquittal, although on more limited grounds than a convicted person, and, in keeping with the truth-finding duty, can even appeal against a conviction on behalf of a convicted person.⁴⁶ The Prosecutor can also appeal against a sentence on the ground that it is disproportionate to the crime.⁴⁷ The Prosecutor also may apply to the Appeals Chamber to revise a final judgement of conviction or sentence on the convicted person's behalf on the basis of new evidence, false or forged evidence that was decisive, or serious judicial misconduct.⁴⁸

3.4. Other matters

The Prosecutor has an important role in the drafting of supplementary instruments, including proposing amendments to the Elements of Crimes and the Rules of Procedure and Evidence, contributing to the drafting of the Regulations of the Court, the Code of Professional Conduct for Counsel, the Staff Regulations of the Court, and the Regulations of the Registry, and drafting the Regulations of the Office of the Prosecutor, which includes its own Code of Conduct.⁴⁹ Although the Registrar prepares the draft budget for the entire Court for review by the Committee on Budget

41. *Ibid.*, Art. 65 (4).

42. *Ibid.*, Art. 64(3)(c); Rules of Procedure and Evidence, Rules 76–79.

43. Rome Statute, Art. 64(8)(b); Rules of Procedure and Evidence, Rule 140.

44. Rome Statute, Art. 64(6)(d). Common law judges have this power in many countries, but rarely use it because it is believed that the adversarial presentation of evidence by the two parties is the best way for the truth to emerge.

45. *Ibid.*, Art. 68(3); Rules of Procedure and Evidence, Rules 89 to 93. These provisions on the participation of victims are to be supplemented in Regulations of the Court scheduled for discussion and possible adoption at the November plenary session of judges.

46. Rome Statute, Art. 81(1).

47. *Ibid.*, Art. 81(2) (a).

48. *Ibid.*, Art. 84(1).

49. *Ibid.*, Art. 9(2)(c) (Elements of Crimes); Art. 51(2) (Rules of Procedure and Evidence); Art. 52(2) (Regulations of the Court); Rules of Procedure and Evidence, R. 8 (Code of Professional Conduct for Counsel); Art. 44(3) (Staff Regulations of the Court); Art. 42(2) (Regulations of the Office of the Prosecutor); and R. 14 (1) (Regulations of the Registry); Art. 42(2) (Regulations of the Office of the Prosecutor).

and Finance of the Assembly of States Parties and approval by the Assembly, the Registrar is required to do so in co-operation with the Prosecutor and respecting the Prosecutor's independence; this arrangement has worked so far.⁵⁰

4. THE CREATIVE USE SO FAR OF STATUTORY POWERS TO MEET CHALLENGES

The Prosecutor, building on work of the advance team established by the Preparatory Commission for the International Criminal Court and the Division of Common Services, as well as on advice from experts, in particular by the CICC Secretariat, has moved quickly to establish and develop the Office of the Prosecutor.

4.1. Extensive consultations

The Prosecutor has been continuing the innovative approach, begun under the Division of Common Services, of undertaking a broad process of consultation with intergovernmental organizations, governments, and civil society. One method has been to institute a series of public hearings, the first of which took place on 17–18 June 2003 and was designed to contribute to the revision of a draft policy paper and draft Regulations of the Office of the Prosecutor that had been circulated for comment before the hearings. More than 120 experts in international criminal law, national judges and prosecutors, representatives of civil society, and members of the press attended, and the interventions and the Office of the Prosecutor's response give some important indications of the direction the Office is likely to take.⁵¹ The Office of the Prosecutor has also been conducting a wide range of consultations with experts on more specialized topics, and some of their contributions have been published.

4.2. Speedy establishment of the Office of the Prosecutor

The Prosecutor has been building up the Office of the Prosecutor expeditiously. On 8 September 2003, he announced to the Assembly of States Parties that 130 persons from 47 countries had applied for the post of Deputy Prosecutor from all five continents. He submitted the names of three nominees to the Assembly of States Parties for the post of Deputy Prosecutor in charge of the Investigation Division. The nominee from The Gambia withdrew because he was appointed as the Prosecutor of the ICTR, and Serge Brammertz from Belgium was elected with 65 votes at the second session for a six-year term, so that his successor's term will overlap the Prosecutor's nine-year term to ensure continuity. The Prosecutor also informed the Assembly of States Parties that he was maintaining geographical and gender representation in

50. Financial Regulations and Rules, UN Doc. ICC-ASP/1/3 (2002), Part II.D, Regulation 1 and Rule 103.2.

51. Summary of Recommendations Received during the First Public Hearing of the Office of the Prosecutor, convened from 17–18 June 2003 at The Hague: Comments and Conclusions of the Office of the Prosecutor. However, the draft Regulations of the Office of the Prosecutor were withdrawn without notice in the light of the organisational changes begun in November 2003 (see below) and it is not known what type of consultation will occur during their revision.

the Office of the Prosecutor in a variety of ways. There is insufficient information currently available to assess how effective these efforts have been or to evaluate the background and qualifications of the staff in each part of the Office of the Prosecutor.

4.3. An Office of the Prosecutor based on functions

The Court's draft Programme Budget for 2004, which covers all the organs of the Court, was largely prepared before the Prosecutor was inaugurated.⁵² However, the part dealing with the Office of the Prosecutor was prepared by the future Prosecutor, together with two experts who became senior officials in the Office, at a meeting in Cambridge, Massachusetts from 24 to 26 April 2003. The budget's overall non-static approach, focusing on the fulfilment of functions and the performance of tasks which drive and define the Court's actions, rather than on its organizational structure, is fully reflected in the work of the Prosecutor so far and is a welcome break with traditional intergovernmental budgeting and organization.⁵³ However, in the light of the Prosecutor's experience in his first five months in office, and recommendations by external management consultants which are not yet public, in November 2003 he began instituting a number of significant changes in the structure of the Office of the Prosecutor from that envisaged in the April 2003 Cambridge meeting and the revised Policy Paper. The advice of the Budget and Finance Committee of the Assembly of States Parties and other consultants was sought in December 2003. Based on discussions in mid-December 2003 with members of the Office of the Prosecutor and others familiar with its workings, the basic outline of the structure of the Office after the changes, which were not yet complete or made public by 1 January 2004, and could be subject to further revision, is expected to be as described below.

The Office of the Prosecutor is to have three divisions, in addition to the Immediate Office of the Prosecutor, headed by the Chef de cabinet, that provides internal oversight. A senior manager has been appointed with responsibility for the overall management of the Office of the Prosecutor. He will also have direct responsibility for two support units: a Knowledge-Base Section, which will develop and maintain the Office database, and a Services Section, which will provide services for the Office, including translation and interpretation and the management of evidence. First, a new External Relations and Complementarity Division is expected to have responsibility for external relations with states, particularly state co-operation and dialogue on questions related to complementarity, and relations with intergovernmental organizations; public information activities of the Office; and analysis of the willingness and ability of states to investigate and prosecute genuinely. Second, the Investigation Division, headed by a Deputy Prosecutor, Serge Brammertz, has an Analysis Section responsible for analysing information made available to the Prosecutor, particularly pursuant to Article 15(1) of the Rome Statute (see below), and an Investigation Section responsible for conducting preliminary examinations and then investigations. Third, the Prosecution Division, headed by the other Deputy

52. Draft programme budget for 2004, UN Doc. ICC-ASP/2/2, 23 May 2003.

53. Paper on some policy issues before the Office of the Prosecutor, ICC-OTP 2003 undated, but revised shortly after the June 2003 public hearings.

Prosecutor, to be elected at the third session of the Assembly of States Parties in September 2004, contains a Prosecution Section and an Appeals Section. These three parts of the Office of the Prosecutor are supported by a Legal Advisory Section, which draws on external legal experts and the responsibilities of which involve legal drafting and advice on request from the operational divisions, legal training, co-ordination of the academic part of an evolving extranet of the Office, and the development of online legal tools which, under current, but still evolving, plans, is expected to have responsibility for a wide range of legal issues, including jurisdiction and admissibility; policy issues, such as investigation and prosecution strategy and the role of victims; and internal training and drafting the Regulations of the Office and co-ordination of legal drafting concerning proposals to amend the Elements of Crimes and the Rules of Procedure and Evidence and consultations concerning the Regulations of the Court, the Code of Professional Conduct for Counsel and the Regulations of the Registry.

Three main principles guide the operations of the Office of the Prosecutor. First, the permanent structure based at the seat of the Court consists of a core of senior staff that will set quality standards, develop policies, give continuity and coherence to the investigations, supported by junior staff, and help the different teams to carry out their investigations. Second, the Office of the Prosecutor draws extensively on external sources, including national investigators and prosecutors, because (where they are independent and not implicated in the crimes) they are considered to be in the best position to carry out some of the work and because using them can help to encourage action by national criminal justice systems. In order to reduce costs further, it also intends to rely extensively on using external consultants, both for technical work and for general legal advice. The degree to which the Office of the Prosecutor will be able to rely on legal advice by outside consultants instead of in-house counsel and measures to ensure that such advice is consistently prompt, independent, impartial and of the highest quality have not yet been determined. Third, so that the Office of the Prosecutor can address a number of situations from different parts of the world, it uses a variable number of investigation teams, the number, size, and composition of which will vary to provide flexibility in the management of investigations.

4.4. Management of cases

A particularly innovative aspect of the structure, based on lessons learned from the experience of trials in national courts and in the two current international criminal tribunals, is the way in which work by different parts of the Office of the Prosecutor on a case is to be co-ordinated, from the initial analysis of information received to preliminary examination, investigation, prosecution, and, finally, appeals. Each investigation team in the Investigation Section will be led by a Case Controller in that section, a lawyer who will direct the work of the team on a daily basis, under the overall supervision of a Special Prosecutor to lead the team from an advanced stage of analysis of information to a preliminary examination and investigation until trial. A team will start with two analysts, one compiling information on the ability and willingness of the state that would normally exercise

jurisdiction – presumably someone with extensive experience in the conduct of national criminal investigations and prosecutions, and the other gathering factual information from open sources on the crimes committed. A committee consisting of the two Deputy Prosecutors and the Head of External Relations and Complementarity Division will recommend to the Prosecutor to begin an analysis of the information concerning the crimes committed and to prepare an investigation plan. The lawyer responsible for presenting the case at trial will advise the investigation team on the elements of each crime that must be proven. The size of each team will expand and contract and its composition will change as the case, and team field offices may be established once the investigation begins. Each investigation team will include staff members who are nationals of the countries targeted by the investigation, screened to protect the integrity and objectivity of the investigation, so that the Office of the Prosecutor will have a better understanding of the society concerned. At the close of the investigation, that team will become a prosecution team in the Prosecution Section under the leadership of a Senior Prosecutor to present the case before the Chambers, keeping as much of the investigation team as is necessary for continuity and adding staff necessary for the trial. This approach is designed to ensure that investigation teams will be prosecution driven and will focus on information essential to prepare effectively for trial. After any appeal, the team will prepare a report and disband.

4.5. The first preliminary examination

In addition to moving quickly to set up the Office of the Prosecutor, the Prosecutor has moved swiftly to build on information received by the Division of Common Services and analysed that information received to identify possible situations for preliminary examination. He announced one month after he was inaugurated that he would closely follow the situation in Ituri, in the Democratic Republic of the Congo (DRC).⁵⁴ Six weeks later, he informed the Assembly of States Parties that, because of the likelihood that genocide, crimes against humanity, and war crimes were occurring, he had instituted in that region his first preliminary examination.⁵⁵ Access to Ituri will be difficult, but not impossible, and he urged the DRC and other states parties to refer the situation to him and to provide security, police, and investigation teams. The DRC delegate pledged his country's co-operation with the preliminary examination, but neither the DRC nor other states have publicly responded to the request for a referral, and it is proving difficult to obtain the practical assistance requested. The Prosecutor has since reiterated this request and informed states parties that, if necessary, he will use his *proprio motu* powers.

The situation in Ituri is likely to be one of a maximum of three very large-scale situations subject to investigation during 2004 by the Prosecutor, with possibly three cases per situation, each case involving approximately three to seven accused. Other models could have been chosen, and it remains to be seen over the coming decade

54. Communications received by the Office of the Prosecutor of the ICC, Press Release, No. pids.009.2003-EN, 16 July 2003.

55. Report of the Prosecutor of the ICC, Mr Luis Moreno Ocampo, 8 Sept. 2003.

whether, as the Office of the Prosecutor gains experience and confidence, different approaches might be adopted. For example, it may prove possible to investigate a larger number of smaller situations with more cases and more accused. However, the adoption of such an approach would depend on access to the crime sites and evidence, the quality and types of evidence, and co-operation with the states where the crimes occurred. Whichever approach is adopted, the number of individuals investigated and prosecuted will necessarily be limited because the resources of the Office of the Prosecutor will be limited. These limits and the principle of complementarity have led the Prosecutor to adopt a two-pronged approach to ending impunity. In the first prong, he will investigate and prosecute persons in leadership positions who bear the greatest responsibility for the crimes. In some cases, the investigation may go beyond these persons if, for example, investigation at a lower level in the chain of command is necessary for the entire case. In the second prong, as explained below, he will also encourage national investigations and prosecutions in the states where the crimes occurred, where feasible, for lower-level perpetrators or work with the international community to ensure that those responsible are brought to justice by some other means, presumably through the exercise of universal or other forms of extraterritorial jurisdiction.

The choice of the situation in Ituri for the first preliminary examination is understandable and the scale of crimes detailed by the Prosecutor is horrific. Although questions are likely to arise as to why other regions in the DRC were not included, the Prosecutor has chosen to focus his very first efforts on one of the clearest possible cases in a manageable geographic area, concerning which he had received considerable documentation.⁵⁶ The Prosecutor noted in July that he had received numerous communications concerning other situations around the world where crimes were being committed in the territory of states parties or by nationals of such states. He did not give any indication as to which of them might be next to be selected, but appealed for further information concerning the ability or willingness of national authorities to deal with these crimes. A review of the situations in states parties suggests that Afghanistan, Colombia or Uganda could be next.

4.6. Dynamic complementarity

The Prosecutor has also announced a number of significant and innovative policy positions that will shape the work of the Court for the coming decades in the area of complementarity and jurisdiction.

The first, and potentially most important, policy initiative is his articulation of a concept of dynamic complementarity that transcends the largely passive concept of this principle that many states envisaged. Under Article 17 of the Rome Statute, which incorporates the fundamental political compromise among states that made adoption of the Statute possible, the Court is a court of last resort, expected to exercise

56. For two recent examples of reports of crimes since 1 July 2002 occurring throughout the DRC within the jurisdiction of the Court, see Amnesty International, 'Democratic Republic of the Congo: Children at War', AI Index: AFR 62/034/2003, 9 Sept. 2003, and 'Democratic Republic of the Congo: Mission Findings', AI Index: AFR 62/025/2003, 1 Aug. 2003.

its jurisdiction only if states themselves are unwilling or unable genuinely to investigate and prosecute. The Prosecutor's role was simply to wait for the Security Council or states parties to refer a situation or for other sources to provide information. Then he or she would decide whether to examine the situation with a view to investigation and possible prosecution, but would take no steps to encourage states parties or other states to fulfil their obligations to investigate or prosecute crimes under international law.

The Court will be able to investigate and prosecute only a limited number of situations and individuals with reference to the hundreds of thousands of crimes committed every year within its jurisdiction. The Prosecutor realized that if the Court is to play an effective role in the global fight against impunity, and if it is to avoid being overwhelmed with cases of lower-level perpetrators that he could not investigate or prosecute, thus leaving an 'impunity gap', he would need to encourage states parties to fulfil their part of the complementarity bargain as reflected in the Preamble of the Rome Statute.⁵⁷ Of course, the very adoption of the Rome Statute has encouraged states parties and other states to begin drafting implementing legislation and to investigate and prosecute genocide, crimes against humanity, and war crimes, if only to avoid having the Court exercise its jurisdiction on the ground that it is unwilling or unable to do so.

However, the Prosecutor has recognized that the existence of the Rome Statute alone may prove to be insufficient as a catalyst for state action if he simply does no more than investigate and prosecute those bearing the greatest responsibility based on information received. He has announced that '[a] major part of the external relations and outreach strategy of the Office of the Prosecutor will be to encourage and facilitate States to carry out their primary responsibility of investigating and prosecuting crimes' through informal and formal networks of contacts, and, in certain instances, to facilitate such action by providing states with non-confidential information.⁵⁸ If this effort is to succeed, he will have to work with the Secretariat of the Assembly of States Parties, as well as with the other organs of the Court, to press states to fulfil their responsibilities to enact and then implement effective legislation. Given the failure of states over the half-century since Nuremberg to investigate and prosecute the millions of crimes under international law committed since the Second World War, and the limited number of states parties that have enacted implementing legislation, much of which is flawed, the Prosecutor faces enormous challenges. How he plans to meet those challenges has yet to be spelled out.

4.7. The role of businesses

The second major innovative policy initiative is to investigate the role of businesses, particularly those involved in money-laundering, the extraction of raw materials, or

57. In the Preamble, states parties affirm that 'the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international co-operation'; must determine 'to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes'; and recall that 'it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes'.

58. Policy paper, *supra* note 53, at 5.

arms dealing, in fuelling crimes within the Court's jurisdiction. This initiative has not yet been fully articulated in a single public document. However, from a review of public statements and discussions with senior members of the Office of the Prosecutor, it appears that it is believed that investigating the role of such businesses will make it easier to understand the foundation of the crimes in a situation, including the chain of command, to improve the chances of suppressing and preventing the crimes.⁵⁹ It is felt that if such sources of support cannot be cut off, there is a serious risk that the crimes would simply continue even if leaders are convicted. Drawing from the experience with combating 'terrorism' by seeking to suppress financing of criminal activity, it is considered that analysis of the financing of crimes under international law will contribute understanding of the situation that can help in the prosecution of the first cases against persons in leadership positions. In addition, those who finance the commission of such crimes or benefit from them share in the responsibility of the leaders and, in some cases, may be individually criminally responsible, for example, for contributing to the commission of the crimes or attempted commission of the crimes by a group of persons acting with a common purpose under Article 25(3)(d) of the Rome Statute. Such investigations will pose a number of novel legal questions, enormous difficulties of proof and demand significant resources. To avoid the diversion of limited resources in the Office of the Prosecutor from investigations and prosecutions of those most directly responsible for the crimes as commanders or superiors, the Prosecutor is hoping to rely on national authorities to investigate and prosecute most of these cases. How vigorously they will do so, how adequate are the national legislation and mutual legal assistance agreements and the extent to which national investigations and prosecutions will require involvement of the Office of the Prosecutor remains to be seen. The role of businesses in fuelling crimes will vary. In contrast to the situations in the Democratic Republic of the Congo and Sierra Leone, such businesses played a minor role in the crimes in many recent situations, such as those in Burundi, Kosovo and Rwanda.

4.8. External relations

The version of the policy paper available as of 1 January 2004 does not specifically address issues other than complementarity, investigations and prosecutions, and the organization of the Office of the Prosecutor. However, the Prosecutor has been engaging in broad consultations on a range of other important matters that will be crucial to the success of the Court, including external relations with intergovernmental and non-governmental organizations, the press and the general public.

Developing an effective and co-operative relationship with the United Nations in the current political environment will present major challenges, as well as opportunities. The current UN Secretary-General, Kofi Annan, has been one of the strongest of

59. See, for example, Communications received, 16 July 2003, *supra* note 54; Report of the Prosecutor, 8 September 2003, *supra* note 55, at 4.

the supporters of the Court and of the defenders against attacks by certain states. The draft Relationship Agreement envisages a key role for the Secretary-General and the Secretariat, including the provision of information to the Court, issuing a UN laissez-passer as a travel document to supplement Court travel documents where necessary, entering into supplementary agreements with the Court, entering into co-operation arrangements or agreements with the Prosecutor, and co-operating fully with the Court to allow it to exercise its jurisdiction should someone who enjoys privileges and immunities under international law with respect to his or her work with the UN contend that they preclude the Court from exercising its jurisdiction. These provisions will be of enormous importance in the context of UN peace-keeping operations, and approval by the UN General Assembly of the Relationship Agreement will need to be a priority for the Prosecutor. The Prosecutor will also wish to develop a good working relationship with the UN High Commissioner for Human Rights, Special Rapporteurs, and Working Groups, as well as human rights treaty bodies serviced by the UN and regional intergovernmental organizations, particularly as sources of information.

Developing a co-operative relationship between the Prosecutor and the Security Council will be difficult, but not impossible, under the current US administration. The Security Council could come under enormous pressure from the rest of the international community to refer situations where there are UN peace-keeping forces, such as that in Ituri, to the Prosecutor. The prospects for such referrals are doubtful in the short term and it might be premature for the Prosecutor to reinforce his calls on states to refer that situation to him by an appeal to the Security Council to do so. Indeed, the most pressing issue in the short term may be to ensure that the Security Council does not seek to prevent UN peace-keepers in Ituri from co-operating with the Court. Nevertheless, over the longer term, referrals should not be completely ruled out. Although the current US administration is likely to press the Security Council to renew Resolution 1422 every year, the Prosecutor will never have to express a view on the legality of such renewal except in the unlikely event that one of the persons alleged to have the greatest responsibility for genocide, crimes against humanity, or war crimes is a national from a non-state party that is contributing to a UN peace-keeping operation with a mandate to prevent such crimes.

The Prosecutor has been consulting with civil society, which played a crucial role through the CICC in the adoption of the Rome Statute and its supplementary instruments, on how to develop an effective relationship that fully respects the independence of the Prosecutor and non-governmental organizations. In particular, the Prosecutor will need to have harmonious relationships with lawyers for accused persons, victims, and others, both through associations, such as the newly established International Criminal Bar, and individually. Extensive discussions are now being conducted with representatives of victims to ensure that victims can participate at every stage of the proceedings in a manner that fully respects the rights of the accused and the need for an effective prosecution. The Prosecutor is also developing as part of this consultation a press strategy and outreach programme.

5. PROSPECTS

The International Criminal Court is one of the latest and most significant stages in the development of what can be seen as an international constitutional system of permanent institutions based on the rule of law. It is far too early to see them as part of an emerging world federalism, and possibly even misleading to conceive of them in those terms. However, these institutions, such as the United Nations and its agencies, the World Trade Organization, the various international and internationalized criminal courts, and the International Criminal Court are further evidence that the concept of national sovereignty no longer should be seen as permitting states unrestricted licence, but rather as describing their rights and concomitant obligations within an international framework of law.

The Court is here to stay. At the moment, the short-term political challenges the Prosecutor faces, such as hostility based on ill-founded fears from certain states, the Court's limited geographic jurisdiction, and the slow pace of enactment of implementing legislation may seem daunting. However, as the Prosecutor rapidly demonstrates his independence from political pressure, and his impartiality, fairness, and effectiveness in conducting trials and in inspiring states around the globe finally to fulfil their duties under international law to investigate and prosecute those responsible for the worst possible crimes in the world, these obstacles should soon be overcome.