

# Keynote Address - Luis Moreno-Ocampo

THE RESPONSIBILITY TO PROTECT: ENGAGING AMERICA

Wednesday 15 November - Friday 17 November 2006

Chicago, Illinois

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16 November 2006

Delivered by video conference (unofficial transcript)

I welcome this opportunity to be with you at least in my electronic form. I regret I could not be there because the Court postponed the beginning of the first judicial hearings and now we are in The Hague in the first judicial hearing of the International Criminal Court. I had to stay. But I would like to share with you some ideas. And I am sure Cherif Bassiouni will explain much better my own ideas, so I am delighted that he will be there. I would like to highlight two points. The first one is that the International Criminal Court could add legitimacy to the Security Council's decision to apply the Responsibility to Protect concept. I would like to present the Uganda case as an example of what I am saying. And the second point is that the power to act, enforcement, is our main common challenge.

Let me start with just reviewing the common background of the ICC &ndash; the International Criminal Court &ndash; and the Responsibility to Protect. In the 2001 report, the International Commission chaired by Gareth Evans and Mohamed Sahnoun explained that the emerging principle of a Responsibility to Protect was grounded in a number of legal foundations with key milestones such as the Universal Declaration of Human Rights, the Genocide Convention, the four Geneva Conventions and two additional Protocols, the Ottawa Convention on Landmines and the Statute of the International Criminal Court. They emphasized that in the transition from a culture of sovereign impunity to a culture of national and international accountability, the development of international

humanitarian law, in particular the Ottawa Convention and the Rome Statute, had been the most striking progress. Even though in some cases imperfectly implemented, these agreements and mechanisms significantly changed expectations at all levels about what is and what is not an acceptable conduct by States. This, for me as a Prosecutor of the International Criminal Court, is very important. As you know, the Rome statute consensus is still growing. Therefore, the Responsibility to Protect concept is helping to build this consensus. Now the challenge became operational, to transform a policy decision in an operation decision, and that's the point that I would like to raise with you: how to do it, how to International Criminal Court would help the Responsibility to Protect concept and how, on the other side, the Responsibility to Protect concept helps the operation of the International Criminal Court. Let me review the common ground of both ideas, because the scheme envisioned by the Responsibility to Protect where each individual State has the primary responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity, including the prevention of such crimes, and the idea that the international community will only step in when a State is failing to do is very much the scheme retained in Rome for the International Criminal Court, the same concept, including the gravity threshold retained for the Responsibility to Protect is also close to our own legal standards under the Rome Statute. The Rome treaty establishes a system in which (inaudible) States agree to this concept but also recognize the idea that the Court will monitor the functioning and will start to act when some of them fail to act. That is why the complementarity system is a key element of the Rome system. So under a system of complementarity system designed by the Rome system, the International Criminal Court is a Court of last resort, it is not the "supercourt" of the world. The International Criminal Court will intervene when States are not carrying genuine proceedings because they are unwilling or unable to do it. I like to use a phrase by Evans/Sahnoun: "The judicial system of sovereign States remains the front line defense of justice." This key concept that the International Criminal Court will always intervene when the States fail to act and it will be a very brief intervention, trying to immediately the national system to recover, the possibility to act. So it is clear that we have common ground, the issue now is how to act, how to transform our ideas into operations. And that is why I would like to present to you the Uganda case because the Uganda case, which is the first investigation we conducted, gives some interesting ideas about how the International Criminal Court would help to put the concept in operation.

When I arrived to this office, my first challenge was how to start a case. No Security Council possibilities, how to start the case. And then what we did is that we discriminated two different concepts. First we had to be independent to select the cases because we had to fulfill the Rome Statute mandate. And then we analyzed all the possible cases under our treaty jurisdiction and we found that the two gravest cases - and gravity is a criteria established by the Rome statute &ndash; the two gravest cases were in Congo and in Uganda. And what we did was invite publicly the Democratic Republic of Congo to refer to us the case, saying that the alleged cases were extremely grave and also that the DRC itself recognized that they were unable to control the situation. That&rsquo;s why I say that if necessary I will use my proprio motu powers to start a case but with preference the idea to receive a referral from the Congo because this will facilitate cooperation. And what happened was that after my open invitation in the Assembly of Parties in the year 2003, I received (inaudible) Ugandan authorities and then I discussed with them the Lord Resistance Army behavior and a few months later they gave to me a referral. In this way, the Office of the Prosecutor started its two first cases with the gravest cases possible but also in agreement with the territorial State showing the possibility that Justice could help sovereign States. At the beginning we found the problem that some people in Uganda, supported by some international actors, were thinking that the best idea was not Justice, it was trying to do mediation. A mediation is, as you know, part of prevention area of the Responsibility to Protect. The Prosecutor&rsquo;s Office is not a mediator. He cannot be involved in mediation. But what we had to do is to respect other initiatives. We understand the idea that we are a little piece of the Justice initiatives and we respect all initiatives, including mediation. So what we did is that we tried to manage the investigation with a very low profile. And for some months, between June-July 2004 to December 2004, the investigation was carried out in different places in Northern Uganda and Betty Bigombe was at the same time trying to reach an agreement with the LRA. And in fact, in November and December 2004, there were meetings in the bush and there were discussions with the LRA leaders about how to solve the conflict. Finally, the conversation collapsed in December. We carried an investigation in a record time. In ten months we were able to collect evidence about six incidents we selected from about 850, against the five persons the most responsible. But we did it in a low profile way, avoiding to interfere with the negotiations. The negotiations collapsed in February, we moved to

the Court in April, and the Court issued an arrests warrant in October &ndash; sorry it was issued in July and unsealed in October 2005.

I like to present in this case the idea that the two different areas in the judicial investigation and the mediation were working in parallel. And both were exploring their possibilities without interfering with each other. And for us, this is a success. Our intervention in Uganda produced some kind of deterrent impact in the Sudanese support to the LRA. We engaged with the government of Sudan to discuss the interaction of how to coordinate activities to control the LRA. And in fact in October 2005, the government of the Sudan signed an agreement with the office of the Prosecutor in which they were ready to execute the arrest warrants against the LRA. And I think this was important, because this combination of intervention of the International Criminal Court plus some local and national efforts, plus international support, plus the support of the Sudan, plus the change in the dynamics of the conflict in Northern Uganda. The LRA lost their heaven in the Southern Sudan and they had to move to Garamba Park in Congo. Interestingly, after the warrants and in part as many observers say, in part because of the arrest warrants, the LRA tried to engage in another peace process, and then the Vice President of Southern Sudan led an effort to start new conversations to reach a ceasefire agreement. Currently the situation is that we have the arrest warrants pending and as a Prosecutor I can do nothing to change this and I will do nothing to change this, and the Judges cannot change this just on the basis of defendants coming to the Court and discussing with the Court. But in any case, in June there are conversations trying to reach an agreement on how to solve the problem. And of course this is important for the judicial intervention because in the best scenario we are requesting the arrest of four persons and there are more than 500 persons in the LRA. So we need someone to negotiate and finalize an agreement with this group to stop the crimes.

The idea I would like to present to you know is that now, apparently, is the time for mediation. Negotiations are having a lot of support. As a Prosecutor, we again are keeping a low profile to try to not interfere with these negotiations. If they reach an agreement, there are some legal solutions. Gareth Evans will explain to you how he is presenting the idea to use article 16 of the Rome Statute that authorizes the Security Council to stop our activities for one year. So as soon as there is some real agreement, there will be a legal solution in the hands of the Security Council if they consider

necessary to solve this conflict. As a prosecutorial and judicial mandate, I cannot be in charge of the peace process. So what I am doing is trying to understand what is happening but not getting involved in that process.

Let me go to my concept. My concept is what about a plan B. What if the mediation collapses, what happens if the LRA attacks again. That would be a shame. Because my point today that the arrest of the LRA is a clear challenge to the International Criminal Court, but also a clear challenge to those States that are supporting the idea of the Responsibility to Protect. Why? Because now is an arrest warrant against four persons, it is no more a war, it is just a judicial intervention to arrest these people. Of course these people are surrounded by three hundred soldiers probably, and it is probably a major operation, but my concept is that it is feasible to make that operation. It is feasible technically, because it is not such a big group and also most of the soldiers are involuntary soldiers. Even there are provided few bullets to them. So it is possible to arrest these people, military. But also it is politically totally feasible. Why? Because basically today the LRA is today in the DRC, and I had a personal discussion with President Kabila, and he fully agreed with the idea that MONUC or other international organizations could go and try to arrest these people. He explained to me that he had no capacity today to arrest these people now because they have conflict in other areas with more priority for them, but he has given full support to this idea. So today, the LRA is a third State that is certainly willing to receive international support. Uganda is willing to provide support to this operation, and the Southern Sudan is also willing to arrest these people. So arresting the LRA is a feasible operation in military terms and in political terms. It is our challenge, it is our common challenge and it would be a shame if the peace process collapses and the LRA attacks again the population in Southern Sudan or in Northern Uganda.

It is our common responsibility to do something.

Let me finalize with something different. One peculiar character of the Responsibility to Protect is the idea of the responsibility to rebuild. And this is an area in which as a Prosecutor I can do nothing, it is not my mandate, it is beyond my mandate obviously,

but without rebuilding, even if we can arrest these people, and I am sure it is going to be a very interesting case in which you have a lot of evidence to present, showing the responsibilities for the crimes that were committed, but even if you convict the LRA leaders, nothing will change in Northern Uganda if the region is not rebuilt. And this is something the international (inaudible) needs to care about. Let me finish with this. We have the information that two children who were abducted when they were nine, they were forced to kill their own families, as LRA was doing, and they were for a few years abducted by the LRA. But then they escaped and went back to Gulu. But they had fear to go to their own village. Why? Because the village would reject them, the village could kill them. So they stayed in Gulu. But there was not work for them, not a job, no one was receiving them, they were rejected. What happened? These two kids, this time voluntarily, went back to LRA. They rejoined LRA, this time voluntarily. The concept is, if we are not rebuilding the system, we are offering them nothing, The international community is not able to provide these kids with something better than Joseph Kony, the leader of LRA.

So let me summarize. Uganda is a good example. If the peace process ends well, that means that there has to be a legal solution compatible with the International Criminal Court Statute, but also we need to rebuild the region. If the negotiation collapses, it is time for the ICC and States supporting the Responsibility to Protect to show that we can be operational, that we can arrest these people, it is time to stop those crimes, we have to do it. In both cases, we have the rebuild the region, and it is more your responsibility than mine.

In any case, it was a real pleasure to be with you this way. And I hope we can do a second conversation on this in which I can be physically with you. Thank you so much for this opportunity.