

## THE INTERNATIONAL CRIMINAL COURT

### *Investigations into crimes committed in the DRC and Uganda.*

### *What is next?*

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The statute of the International Criminal Court is now in force and the court has begun its first investigations. Other conflicts and more investigations are being considered. The first investigations in the DRC and Uganda are based on these states referring crimes committed on their own territory to the court, an unexpected development. Such a move has been encouraged by the court's prosecutor, hoping that this will enhance the state's crucially needed cooperation in the investigations. The prosecutor has announced some core policies: a positive approach to cooperation, a focused prosecutorial strategy aimed at the perpetrators who are most responsible, and a limited number of cases. Other preparations for the investigations have been made. This paper provides an update on recent developments regarding the court and points out some challenges, including the operations of the court vis-à-vis other peace efforts.

### Introduction

The Rome Statute of the International Criminal Court (ICC) came into force on 1 July 2002 and in 2003 the judges,<sup>1</sup> prosecutor and registrar took office. To date, 94 states are parties to the statute, 24 of them being African states. The Democratic Republic of Congo (DRC) ratified the statute on 11 April 2002 and Uganda on 14 June the same year.

Subsequently, this brand-new international institution, which is committed to learning from previous experiences (good and bad), has established itself by expounding its internal organisation, recruiting staff, drafting and adopting various instruments such as the regulations of the court, and developing support systems for administrative and operational routines. The approach has been that this per-

manent institution should benefit from careful planning instead of rushing ahead, risking early mistakes that may take a long time to correct. This paper provides an update of the activities of the court, with particular emphasis on developments concerning the DRC and Uganda.

Soon after the statute came into force, communications from individuals and organisations began to come in to the ICC regarding alleged crimes that ought to be investigated. As of June 2004, the Office of the Prosecutor (OTP) had received almost 800 communications, many of them about the same conflicts. All communications that could potentially lead to the prosecutor initiating an investigation *proprio motu* with the authorisation of a judicial chamber<sup>2</sup> must be assessed. The OTP

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has developed a rigorous process for dealing with such communications.

Prosecutor Luis Moreno Ocampo announced to the ICC Assembly of States Parties in September 2003 that Ituri, in the DRC, was 'the first situation which merits to be closely followed by the Office'.<sup>3</sup> At that time, no referral had been made by a state or the UN Security Council and no formal investigation had commenced. In fact, it was still not clear how the court's exercise of jurisdiction should be triggered regarding Ituri. During this initial phase, the OTP conducts an analysis of information, much of it from open sources, and makes contacts with states and others. The tools under the statute for a formal investigation or cooperation with states were not yet available but even so the prosecutor was obliged to determine whether the criteria for the commencement of an investigation had been met. One important criterion is whether the 'case is or would be admissible under article 17',<sup>4</sup> that is, the so-called complementarity principle, which establishes the relationship between national criminal jurisdictions and the ICC.

More recently, first Uganda and then the DRC took the step of referring to the ICC prosecutor situations within each country's own borders, thus triggering the jurisdiction of the court.<sup>5</sup> The situations have been assigned to different pre-trial chambers.<sup>6</sup> In addition, the OTP continues to monitor other situations of potential concern<sup>7</sup> and more recent events point towards possible future investigations in three other African countries: the Central African Republic, Ivory Coast and Sudan (Darfur).

### A collaborative approach

The ICC does not have its own police force and will often face great difficulty in obtaining access to the crime site or to witnesses and other evidence. Although the statute places strict obligations upon the states parties to cooperate with the court, cooperation will often be a much more complex exercise in practice. Sanctions for a state's non-compliance with obligations vis-à-vis the ICC are possible, but, as always, international sanc-

tions are a somewhat blunt and unpredictable instrument. While sticks may be useful, and the prosecutor's *proprio motu* powers constitute an important tool, carrots are probably faster and more reliable.

On a similar note, the prosecutor has opted for a collaborative approach vis-à-vis the international community in general, including states, international organisations and civil society, and in particular towards the states in which international crimes have allegedly been committed.<sup>8</sup> The approach has ramifications for the complementarity principle – encouragement and support for national prosecutions rather than competition. The prosecutor has labelled this 'a positive approach to complementarity'. This approach has been applied to both the DRC and Uganda.

A state that is hostile to the ICC taking action cannot be expected to assist the court in the way required for effective investigations and prosecutions within reasonable timeframes. The length of proceedings before the ICTY and ICTR has been of great concern for political, financial and legal reasons. Assistance with the investigations is needed, for example by providing access to sites, archives and people, including military personnel, and with respect to arresting and surrendering suspects. However, deployment of ICC investigators in the field is also important since victims and witnesses may be very reluctant to speak to state officials. Protection of victims, witnesses, and ICC investigators is crucial. The cooperation of state organs may prove indispensable, particularly in a state where the conflict is continuing,

Nevertheless, it is of crucial importance that the focus on a constructive dialogue with states, represented by their governments, does not compromise the court's independence and impartiality. As underlined by the ICTY's first prosecutor, Richard Goldstone, the prosecutor of an international criminal jurisdiction must play a role that differs significantly from that of a national prosecutor and involves extensive contacts with states and others.<sup>9</sup> Still, the prosecutor must exercise a great deal of caution and have *fingerspitzengefühl* in this difficult balancing act.

## DRC

When the prosecutor announced in September 2003 that his office was watching Ituri, he expressed his readiness to use the *proprio motu* powers in order to commence formal investigations. But it was clear from the outset that he would rather seek a collaborative solution, preferably with the assistance and support of African countries.<sup>10</sup> Hence, the ICC prosecutor entered into a dialogue on a 'consensual division of labour' with the DRC. The ICC would target leaders who bear the greatest responsibility for crimes within the jurisdiction of the court (including temporal jurisdiction) and national authorities would deal with others in appropriate ways.<sup>11</sup> There were early signals that the DRC welcomed the approach and an extensive dialogue between the prosecutor and the government of the DRC took place. Contacts with other states were also made.

The efforts were fruitful. In a letter dated 3 March 2004 and signed by President Joseph Kabila, the DRC, as a state party to the Rome Statute, referred the situation of the DRC since 1 July 2002 to the ICC. Of course this referral has a background in domestic Congolese politics and there may well have been different views within the transitional DRC government as to whether it should have been made at all.<sup>12</sup> Interestingly, Vice-President Jean-Pierre Bemba of the (MLC) movement, who is regarded by some as a potential war criminal, did not oppose the move at a press conference shortly afterwards. However, he did support the Lusaka Accord and the principle contained in it that a rebel movement has the right to administer the justice system within the territory that it occupies. Bemba concluded that the ICC must respect criminal proceedings conducted by such authorities. Indeed, the MLC has put some human rights violations on trial, but the legitimacy and credibility of those trials have been seriously questioned.<sup>13</sup>

In June 2004 Moreno Ocampo announced his decision to open the court's first criminal investigation into crimes allegedly committed on the territory of the DRC since 1 July

2002.<sup>14</sup> Notification of the decision was sent to states in accordance with the statute, thus giving them an opportunity to request deferral to national proceedings.<sup>15</sup> No such request has been made and the investigation focuses on the Ituri region.

## Uganda

The Ugandan government's move to refer a situation in its territory to the ICC was more surprising. The referral took place in December 2003, that is, before the DRC referral, and was made public on 29 January 2004. The referral immediately put the prosecutor to the test. According to its wording, the referral was one-sided and pointed to 'the situation concerning the Lord's Resistance Army', that is, the armed opposition in the north of the country. Of course such an investigation would easily compromise the ICC's standing as an independent and impartial criminal court and concerns were raised, *inter alia*, by NGOs. Besides the policy issue, it is debatable whether the court could legally accept a referral from a state that relates only to one party to the conflict.

Hence, the prosecutor has stressed – both in public and in talks with the Ugandan government – that his office will investigate all crimes related to the situation in an impartial way, that is, including any crimes committed by, for example, Ugandan government forces (UPDF),<sup>16</sup> although to date there have been few efforts to punish them domestically. President Museveni has also reportedly – according to the BBC – pledged to cooperate with the ICC in the investigation of government forces.<sup>17</sup> The wording of the referral is ambiguous as to its exact scope but with the interpretation of the mandate that the prosecutor has given, together with the acceptance of the Ugandan government, the question of one-sidedness has evaporated (at least for now) and the OTP is moving ahead on the understanding that crimes will be investigated objectively, regardless of the identity of the perpetrators.<sup>18</sup>

In July 2004 the prosecutor began a criminal investigation into the situation in north-

ern Uganda regarding crimes committed from 1 July 2002 onwards. The investigation is under way and, according to press reports, Moreno Ocampo has expressed the hope that criminal proceedings will open in mid-2005.<sup>19</sup>

### Central African Republic, Ivory Coast and Sudan?

Yet another country, the Central African Republic (CAR), has referred a situation that concerns the country itself. CAR ratified the Rome Statute on 3 October 2001 and the referral, received by the prosecutor in January 2005, encompasses crimes committed in the country since 1 July 2002. The OTP is currently conducting the analysis required to determine whether the criteria to initiate an investigation are satisfied.<sup>20</sup> The decision whether to open a formal criminal investigation has not yet been taken regarding the CAR.

As to the Ivory Coast, not yet being a party to the Rome Statute, President Gbagbo has reportedly submitted a letter granting the ICC jurisdiction over crimes committed in the country.<sup>21</sup> This is not sufficient for the commencement of a criminal investigation by the court, however, and no such investigation has been initiated. Nonetheless, crimes in the Ivory Coast could later be the subject of ICC investigation and the UN has admitted that it has drawn up a list, which is still confidential, of people accused of human rights abuses during the country's two and a half-year-old civil war.<sup>22</sup>

The most recent and perhaps the most interesting development is the current discussion regarding the Security Council referring the situation in Darfur, Sudan, to the ICC. This would be the first referral of its kind and it could target a non-state party such as Sudan.<sup>23</sup> Discussions were recently triggered by a UN report that reported crimes in the Darfur conflict and strongly recommended that the situation should be referred to the ICC.<sup>24</sup> Many members of the council have expressed their support of a referral, but the United States is against it. Instead, the United States, which is careful not to legitimise the

ICC, is said to favour a special court for Darfur. However, this approach appears unrealistic. One idea behind the ICC was to avoid the creation of *ad hoc* international criminal tribunals. In addition, a new institution would be expensive and take a long time to implement. The matter is still to be decided.

### Complementarity and cooperation

As noted above, the prosecutor must establish that the case is or would be admissible – with respect to the complementarity principle – before an investigation may be commenced. A referral by a state party of a situation that occurs within that state was not really contemplated when the statute was negotiated. However, it may be argued that the admissibility of a case before the court is not an issue when the state is passive and is not investigating the alleged crimes.<sup>25</sup> In the referral, the DRC indicated that its relevant authorities are not able to investigate and prosecute crimes that the ICC is competent to try. While there may be pertinent reasons for a state not exercising jurisdiction, and thereby for example providing for burden-sharing with the ICC, there is a risk of states dump on the court cases that they cannot or do not want to handle themselves. Hence, the prosecutor will have to develop different techniques to minimise this risk and use the legal tools at his or her disposal to prevent overburdening the court.

Nevertheless, a referral is expected to bring additional positive effects. In the prosecutor's words, a state referral of a situation comes with 'a strong expectation that the state will give its support and cooperation' and a state referring a situation within its own territory is 'a great sign of confidence and trust in the court'.<sup>26</sup> The DRC and Uganda have both made explicit commitments to cooperating with the court.

Legal cooperation and possible national prosecutions require implementing legislation in both countries. While the DRC takes a monist approach to international treaties and thus accepts that binding international treaty provisions will be applied directly by national authorities, effective legal cooperation

requires amendments to the laws of the land. A draft bill addressing both substantive criminal law and cooperation with the ICC was submitted to parliament in 2002, but not much progress has been made so far. Uganda, on the other hand, applies a dualistic approach to treaty obligations and implementation into municipal law is required. To this end, on 28 May 2004 a draft bill on the necessary legislation was published by the Ugandan government and submitted to parliament.

However, full cooperation by the referring state is not enough. There is foreign involvement in both conflicts, non-ICC states parties are implicated in the hostilities and foreign nationals fall under the court's jurisdiction concerning crimes committed in a state party to the ICC. At the same time, however, successful prosecutions may depend on the cooperation of some of these foreign states. For example, the leader of the Lord's Resistance Army (LRA), Joseph Kony, is allegedly based in southern Sudan and thus the cooperation of Sudan, a non-state party alleged to have supported the LRA in various ways, may prove necessary. While efforts to seek Sudanese cooperation may benefit from the peace process regarding the southern part of the country, the conflict in the western part, in Darfur, could be a complicating factor. Similarly, Rwanda may be a necessary cooperation partner concerning the DRC, and also Uganda, although these states have actively taken part in the DRC conflicts. As in the *ad hoc* tribunals (ICTY and ICTR), the ICC will probably have to employ all its skills and tools in order to obtain the cooperation that it needs.

The DRC and Uganda have both signed executive agreements with the United States, so-called bilateral immunity agreements. While these agreements are highly controversial, and their effects for the court's exercise of jurisdiction are disputed, they should not pose any particular problem in practice with respect to investigations and prosecutions by the ICC for crimes in the DRC and Uganda.

The court may cooperate not only with states but also with other entities such as inter-governmental and non-governmental organi-

sations. The statute foresees a special relationship between the ICC and the United Nations and a draft relationship agreement, submitted by the ICC Assembly of States Parties, has been negotiated between the UN Secretariat and the ICC and was signed by the UN Secretary-General, Kofi Annan, and the president of the ICC, Philippe Kirsch, on 4 October 2004. This development has paved the way for cooperation with UN peacekeeping operations, and in accordance with its present mandate the UN mission in the DRC (MONUC) will 'continue to cooperate with efforts to ensure that those responsible for serious violations of human rights and international humanitarian law are brought to justice'.<sup>27</sup> However, while the mandate provides for cooperation, it falls short of allowing MONUC to use all necessary means to do so.

Moreover, on 22 December 2004 a cooperation agreement was signed by the OTP and Interpol, establishing a framework for cooperation between the two parties. The OTP, *inter alia*, will obtain access to Interpol telecommunications network and databases, and cooperation is foreseen regarding the exchange of police information and criminal analysis as well as in the search for fugitives and suspects.

### **Prosecutorial strategy, investigations and other proceedings**

The prosecutor needs a strategy that takes into account the global nature of the court and thus several situations in different parts of the world may have to be handled concurrently. The resources of the court will be limited and relatively swift proceedings are striven for. However, the potential number of suspects and crimes in each situation will probably be high and thus priorities must be made. Like the ICTY and ICTR, as well as the Special Court for Sierra Leone, Prosecutor Moreno Ocampo has chosen a policy which targets 'those who bear the greatest responsibility, such as the leaders of the State or organisation allegedly responsible for those crimes'.<sup>28</sup> In an ongoing conflict, a focus on top rebel leaders could lead to their isolation and encourage some of their followers to dis-

tance themselves and seek separate arrangements with the government. Scrutiny of political and military leaders on the government side may prompt reforms and measures to address impunity within the military and security forces.

An unresolved question is how to establish who are 'those most responsible' for the crimes. Those who have had a functional role as leaders and planners are not necessarily the sole targets, but also some of those who have committed the most notorious crimes could be included. Carla del Ponte, the ICTY prosecutor, has stated that some individuals who have committed numerous crimes in the most overt, systematic or widespread manner might play a large role in encouraging others by setting examples and hence qualify as 'the most responsible'.<sup>29</sup>

In the DRC, for example, neither the referral nor the prosecutor's decision restricts the court's exercise of jurisdiction to a certain region. However, the court's resources will allow only a limited number of investigations and crimes committed in Ituri will apparently be targeted initially. Moreno Ocampo has spoken of possibly two cases being brought forward to start with, each focusing on different warring groups, and dealing with a handful of suspects.<sup>30</sup> A similar approach could be expected for Uganda.

Investigations are led by Serge Brammertz, one of the deputy prosecutors. A small interdisciplinary team of lawyers, investigators, and military and other experts is assigned to each investigation. Detailed investigation plans are prepared. Interaction with national experts and specialist resources in different countries is also foreseen. Trial attorneys will participate as early as the investigation, contributing to investigation plans and evidence collection which are geared towards the needs for trial. Another deputy prosecutor, Fatou Bensouda of Gambia, is responsible for the trials.

With focused and well-prepared investigations, the length of the proceedings could be shortened. In practice it may be difficult to establish the criminal responsibility of leaders and planners without investigating others lower down the chain of command. However,

experience has shown that broad investigations in which extensive evidence is gathered provide for extensive charges, problems with respect to a good overview of the material (possibly in multiple cases) and disclosure obligations, as well as long trials. The effects will be felt throughout the court. Thus, investigations in accordance with the prosecutor's general policy and a selective charging practice are expected. Additionally, the OTP is developing ideas on how to minimise the interviewing of witnesses, and thus avoid putting them at risk. Another feature of the ICC, which is different from its predecessors, is that judges will also have a role to play in the investigation. The pre-trial chamber has functions that may make it possible to collect and preserve evidence that could later be used at trial.

As part of the focused approach, new computer-based tools are being developed. One such tool is intended to match legal requirements for different crimes and the evidence obtained in the investigation. As in some national jurisdictions, the ICC prosecutor is obliged not only to focus on incriminating evidence, but also to seek exonerating evidence (a 'principle of objectivity'). This requires additional work, but might save the court time and efforts in the longer run.

The ICTY and ICTR do not sit in the former Yugoslavia or Rwanda, something that is sometimes criticised. The ICC is based in The Hague, but the statute foresees that the court will conduct judicial proceedings, including the trial, in other locations with the consent of the state in question.<sup>31</sup> Logistically this may be a nightmare, but could bring other positive effects. There are currently discussions within the court as to whether certain proceedings at least should be carried out on site, particularly by the pre-trial chamber, and the budget adopted for 2005 provides for the creation of field offices in the two situations under investigation.

### **The ICC and victims**

In the ICC proceedings, the victims of crimes are given a different role from that of simply providing evidence. They can participate in

the criminal proceedings in their own right and the statute also contains provisions on reparations.<sup>32</sup> These features have been widely hailed, but there are concerns that high expectations will be impossible to meet in practice. All organs of the court are currently working on how to best accommodate the requirements of the statute with respect to security and participation of victims as well as reparations. Civil society organisations are also involved in this process.

Furthermore, the statute establishes an independent Trust Fund for Victims, which is part of the scheme for reparations to victims. The board of directors of the fund, who include former archbishop Desmond Tutu,<sup>33</sup> met in April 2004 for the first time to discuss *inter alia* the fund's jurisdiction, management, and criteria for receipt of funds. The criteria will later be established by the Assembly of States Parties.

### **Criminal investigations and other peace efforts**

In both countries, perhaps even more so with respect to Uganda, there is some concern that criminal investigations and prosecutions may derail ongoing peace efforts. This is an important issue for supporters and sceptics of the court.

In Uganda, the amnesty legislation that was adopted to encourage rebel forces to lay down their arms will pose a challenge to the Ugandan government and to the ICC. The government may encounter conflicting domestic (amnesty) and international (cooperation) obligations. The ICC is not bound by amnesties that were decided in a particular state and is not prevented legally from moving ahead with an investigation or prosecution of someone who has been granted amnesty. Still, the court, as an international vehicle for a more peaceful and secure world, should be sensitive to processes aimed at bringing about peace, transition to democracy, and reconciliation.

Without entering the ongoing debate as to whether amnesty is an option for states regarding the international crimes under the

jurisdiction of the ICC, it is worth noting that the Rome Statute contains some mechanisms that allow the court to take a balanced approach to other processes. While the complementarity principle apparently leaves little room for a case being inadmissible owing to non-criminal proceedings, the court's mandate is explicitly directed towards the most serious crimes of concern to the international community as a whole and a case will be inadmissible if it is 'not of sufficient gravity'.<sup>34</sup> The prosecutor's focus on 'those most responsible' should also be mentioned again. Moreover, and a more promising aspect, the prosecutor is required to determine whether the initiation of an investigation would be 'in the interests of justice', a requirement that provides the prosecutor, and on review the judges, with a level of discretion.

In addition, this court is a permanent institution and is not bound by statutes of limitations regarding the core crimes.<sup>35</sup> And good timing may well be a key to minimise any disruption that prosecution might cause to a peace or transitional process. Unlike other international criminal tribunals and courts with a limited lifespan, the ICC thus has the option – although admittedly it is not unproblematic for political and legal-practical reasons – of using restraint in a particularly sensitive phase of a political process. Contributing to new victims instead of deterring crimes is hardly in the interests of victims or justice. Any such action, or non-action, must be exercised with great care so that the independence and impartiality of the court are preserved.

Moreover, the temporal jurisdiction of the ICC is limited to crimes committed from 1 July 2002 – the date that the Rome Statute came into force<sup>36</sup> – but of course the conflicts, including the commission of international crimes, go back much further. Hence, the crimes that the ICC may handle are only the most recent ones and other mechanisms will have to be introduced to address earlier crimes and the broader issue of justice after the war, be they national prosecutions (with or without international support), truth and reconciliation processes, a combination of these, or

something else.<sup>37</sup> The criminal proceedings before the ICC may contribute to, but, owing to the nature of such proceedings and temporal limitations, not provide a full historical record of the conflict.

### Some reflections

The first investigations of the ICC address conflicts in Africa. Besides being the very first operations of the court, the conflicts themselves are very challenging. In both the DRC and Uganda armed violence has not ceased and the government does not have control over all affected areas. The cooperation of the respective governments is necessary for effective investigations and prosecutions, while at the same time state officials and government forces may be investigated. Indeed, a fine line to tread. The principle of complementarity may offer a way out, requiring national authorities to be willing and able to investigate and prosecute the crimes. Also mechanisms other than criminal justice measures will probably be required in order to address broader issues and the large number of lower-level war criminals. The prosecutor's published strategies and various procedural provisions, as well as the permanence of the institution, leave room for a careful and well-timed action with due regard to other initiatives to bring peace and stability to the affected regions.

The cooperation of other states is needed, not least other African states, and thus the announcement by the Commission of the African Union that the ratification of the Rome Statute by all member states is a priority for the union is an encouraging sign.<sup>38</sup> In addition, cooperation with international organisations, NGOs and civil society groups will play an important role. If successful, the court can contribute to deterring ongoing atrocities, ending cycles of violence, combating impunity, and restoring the rule of law. However, the court and its activities form only one, albeit an important, building block for bringing about long-term peace and more stable societies, and its success depends on the support and commitment of many. The pros-

ecutor's collaborative approach is aimed at promoting this, but it must be exercised without jeopardising the court's independence and impartiality. A complex task for complex situations.

### Notes

- 1 During the build-up phase, not all 18 judges are permanently in The Hague and have therefore not, formally speaking, taken office.
- 2 Article 15 of the Rome Statute.
- 3 'Statement of the prosecutor at the second session of the Assembly of States Parties', 9 September 2003: <[www.icc-cpi.int/library/organs/otp/030909\\_prosecutor\\_speech.pdf](http://www.icc-cpi.int/library/organs/otp/030909_prosecutor_speech.pdf)> (4 February 2005).
- 4 Article 53.1 c of the Rome Statute and Rule 104 of the Rules of Procedure and Evidence.
- 5 Articles 13 a and 14 of the Rome Statute.
- 6 Three pre-trial chambers were formally organised on 23 June 2004 (ICC-Pres-01/04) and on 5 July 2004 the presidency assigned the DRC situation to Pre-Trial Chamber I (ICC-01/04) and the Uganda situation (although no decision to investigate has yet been taken) to Pre-Trial Chamber II (ICC-02/04); the decisions are available at <[www.icc-cpi.int/cases.html](http://www.icc-cpi.int/cases.html)>(4 February 2005).
- 7 See the 'Address by Prosecutor Luis Moreno Ocampo to the third session of the Assembly of States Parties', The Hague, 6 September 2004, referring to six undisclosed situations that the OTP has chosen to follow: <[www.icc-cpi.int/library/asp/060904\\_Moreno\\_Ocampo\\_third\\_ASP\\_English.pdf](http://www.icc-cpi.int/library/asp/060904_Moreno_Ocampo_third_ASP_English.pdf)> (4 February 2005)
- 8 See the 'Paper on some policy issues before the Office of the Prosecutor', September 2003 (hereinafter 'Prosecutor's policy paper'): <[www.icc-cpi.int/library/organs/otp/030905\\_Policy\\_Paper.pdf](http://www.icc-cpi.int/library/organs/otp/030905_Policy_Paper.pdf)> (4 February 2005); see also the 'Prosecutor's statement to the Diplomatic Corps in The Hague, Netherlands', 12 February 2004: <[www.icc-cpi.int/library/organs/otp/OTP.SM20040212-EN.pdf](http://www.icc-cpi.int/library/organs/otp/OTP.SM20040212-EN.pdf)>(4 February 2005).
- 9 R Goldstone, A view from the prosecutor, *Journal of International Criminal Law*, 2(2) 2004, pp 380-384.
- 10 OTP Press release on 26 September 2003: <[www.icc-cpi.int/press/pressreleases/12.html](http://www.icc-cpi.int/press/pressreleases/12.html)> (4 February 2005).
- 11 See 'Prosecutor's statement to the Diplomatic Corps in The Hague'.
- 12 See 'ICC joins the Congolese chess game', International Justice Tribune - Independent Newsletter, No 8, 2004: <[www.justicetribune.com/include/print\\_uk.php?id=2697&reference=>](http://www.justicetribune.com/include/print_uk.php?id=2697&reference=>)> (4 February 2005).
- 13 See, for example, US Department of State, 'Country reports on human rights practices 2003',

- Democratic Republic of the Congo, 25 February 2004: <[www.state.gov/g/drl/rls/hrrpt/2003/27721.htm](http://www.state.gov/g/drl/rls/hrrpt/2003/27721.htm)> (4 February 2005).
- 14 Article 53.1 of the Rome Statute; see the OTP press release on 23 June 2004: <<http://www.icc-cpi.int/press/pressreleases/26.html>> (4 February 2005).
- 15 Article 18 of the Rome Statute.
- 16 See 'Prosecutor's statement to the Diplomatic Corps in The Hague'.
- 17 Referred to in: 'Remarks by the ICC Prosecutor Luis Moreno Ocampo at the 27th Meeting of the Committee of Legal Advisers on Public International Law (CADHI)', Strasbourg, 18-19 March 2004: <<http://www.iccnw.org/documents/statements/others/ICCProsecutorCADHI18Mar04.pdf>> (4 February 2005).
- 18 See the prosecutor's letter to the ICC presidency (17 June 2004), attached to the decision to assign the situation to a pre-trial chamber, op cit.
- 19 See 'ICC hopes for Uganda trial in 6 months, then Congo', Reuters, 26 January 2005.
- 20 A pre-trial chamber has also been assigned to this situation on 18 January 2005 (ICC-01/05).
- 21 Article 12(3) of the Rome Statute. The Ivory Coast signed the statute on 30 November 1998 but has not acceded to it.
- 22 See 'Côte d'Ivoire: UN confirms blacklist of human rights abusers', IRIN, 1 February 2005: <[www.irinnews.org/print.asp?ReportID=45304](http://www.irinnews.org/print.asp?ReportID=45304)> (3 February 2005).
- 23 Sudan has signed the Rome Statute on 8 September 2000 but has not ratified it.
- 24 'Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General', Geneva, 25 January 2005. <[www.iss.org.za/AF/profiles/Sudan/darfur/icidrep.pdf](http://www.iss.org.za/AF/profiles/Sudan/darfur/icidrep.pdf)> (7 Feb. 2005). The commission was established pursuant to Security Council Resolution 1563 (2004) of 18 September 2004.
- 25 See 'Prosecutor's policy paper', p 5; see also 'Informal expert paper: the principle of complementarity in practice', 2003, pp 18-21: <<http://www.icc-cpi.int/library/organs/otp/complementarity.pdf>> (4 February 2005).
- 26 'Remarks by the ICC Prosecutor Luis Moreno Ocampo at CADHI meeting'.
- 27 Security Council Resolution 1565 (2004) of 1 October 2004, which also extends the deployment of MONUC until 31 March 2005.
- 28 'Prosecutor's policy paper', pp 6-7.
- 29 C Del Ponte, Prosecuting the individuals bearing the highest level of responsibility, *Journal of International Criminal Justice*, 2(2) 2004, p 517. See also: 'Informal expert paper: measures available to the International Criminal Court to reduce the length of the proceedings', 2003: <[www.icc-cpi.int/library/organs/otp/length\\_of\\_proceedings.pdf](http://www.icc-cpi.int/library/organs/otp/length_of_proceedings.pdf)> (4 February 2005).
- 30 Presentation to the All-Party Parliamentary Group on the Great Lakes Region and Genocide Prevention, House of Commons, London, 24 June 2004.
- 31 Articles 3 and 62 of the Rome Statute.
- 32 Articles 68 and 75 of the Rome Statute.
- 33 The other board members are Queen Rania Al-Abdullah of Jordan, Oscar Arias Sánchez (Costa Rica), Tadeusz Mazowiecki (Poland) and Simone Veil (France).
- 34 Article 17 of the Rome Statute; see also D Robinson, Serving the interests of justice: amnesties, truth commissions and the International Criminal Court, *European Journal of International Law*, 14 2003, pp 481-505.
- 35 Article 29 of the Rome Statute. The prosecutor has stressed the benefits of being a permanent institution; for example, 'Prosecutor's statement to the Diplomatic Corps in The Hague'.
- 36 Article 24 of the Rome Statute.
- 37 See H Friman, The Democratic Republic of Congo: justice in the aftermath of peace?, *African Security Review*, 10(3) 2001, pp 63-77.
- 38 See 'Strategic plan of the Commission of the African Union, Volume 3: 2004-2007 Plan of action – programmes to speed up integration of the continent', May 2004, p 65: <<http://www.africa-union.org/AU%20summit%202004/AU%20summit%202004.htm>> (4 February 2005).