Presentation by Luis Moreno-Ocampo
Prosecutor of the International Criminal Court
UNITAR Seminar on the
Prevention of Genocide
New York, NY April 2, 2007

Excellencies, Ladies and Gentlemen

Thank you for the opportunity to be with you today. As Prosecutor of the ICC with the power and the duty to investigate massive crimes, including Genocide, I welcome the opportunity to build upon lessons learnt by a diversity of actors and to work towards strengthening the network of individuals and organizations working to prevent and punish acts of genocide.

The 1948 Convention on Genocide is a founding text for the ICC; it is also a visionary text which already envisaged the creation of an international tribunal. In 1998 in Rome, the adoption of the Statute of the ICC was the culmination of efforts of the international community to establish a legal framework for

the prevention and repression of genocide and other massive crimes; with the establishment of an independent Prosecutor with proprio motu powers to open investigations, regardless of any political control, States made a radical, even revolutionary decision. Are they ready today to ensure compliance with this new system? This is what I would like to discuss with you today.

I will address 3 issues:

- the significance of the Genocide Convention as a founding text of the ICC ;
- the deterrent and preventive role of the ICC,
- the challenge we meet in enforcing this new legal framework.

I – The Genocide Convention and the ICC

As you know, the definition contained in article II of the Convention has been copied literally into the Rome Statute. But the

contribution of the drafters to the ICC Statute is even greater.

The Adoption of the Genocide Convention was the first expression of a worldwide consensus that crimes of this nature should no longer go unpunished; in addition, the drafters recognized that, for the law to be effective, an independent judicial enforcement mechanism would be required.

To that end, article 6 refers to the authorities with jurisdiction over the crime: ' a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal'; nowadays of course, the idea that national jurisdiction over genocide should be limited to the territorial state seems out dated; opinio juris and State practice have developed and many States have established and actually exercised universal or quasi universal jurisdiction over forms of genocide.

Looking back however, the other jurisdictional clause, the reference to an international penal tribunal was a revolutionary novelty in international law. That idea, and the lessons learnt from the political hesitations that allowed genocides such as the ones in Srebrenica and Rwanda to happen, laid the foundations for the ICC.

II - The Preventive role of ICC

Like all criminal law enforcement systems, the ICC is based upon the underlying idea of prevention. It is clearly stated in the Preamble to the Rome Statute that one of the goals sought is to put an end to impunity and thus contribute to the prevention of massive crimes.

The activity and jurisprudence of the ad hoc tribunals, ICTY in the Srebrenica case and ICTR, have of course played an essential part in developing the law and making this concept of prevention a reality. Both tribunals can therefore be seen as temporary implementation of the international tribunals

to which the genocide convention already refers.

What is new in the Rome Statute is the decision to establish a **permanent** Court, as opposed to the creation of ad hoc tribunals in post conflict situations; this was an important evolution.

In addition, even more important was the States' acceptance of article 15 of the Statute, which establishes the **propio motu powers of the prosecutor** to open an investigation; such a provision, which allows the Court to act without an additional trigger from States or the UN Security Council, ensures that the requirements of justice will prevail over any political decision. This was a revolutionary provision. It creates a new autonomous actor on the international scene. It creates a framework, beyond the control of political actors, where prevention can become a reality.

All past genocides, in WWII Europe, in Rwanda and the Former Yugoslavia, have

been committed by organizers and have been carefully planned; now the planners will know that we can go after them; although the effect of such a new approach cannot be assessed yet in terms of preventing genocides, there are already some signs of the impact of the ICC Statute in other areas.

There is the development of national legislations and policies to reflect the Statute; since 1998 and in part thanks to the constant efforts of the Coalition of NGOs for the International Criminal Court, criminal codes have been changed, and implementing legislation adopted;

There is also the fact that armies in a number of countries have revised their operational planning system to take into account this new body of law;

There is the very interesting example of Côte d'Ivoire, where there was a drastic reduction in hate speeches after Juan Méndez, Special Advisor to the UNSG on the Prevention of

Genocide, indicated that the ICC might intervene;

Then, we have the experience of our first case to go to trial, the case of prosecutor against Thomas Lubanga Dyilo, a case focused on the recruitment of child soldiers, which is being used in advocacy campaigns to stop this crime by NGOs, UNICEF and the Special representative of the Secretary General; already, those interlocutors tell us how helpful it is to be able to state to armed groups worldwide, building on our judicial case, that enlisting child soldiers is a serious crime that will be prosecuted. What could have seemed an empty threat yesterday is a reality today.

I would also point out that as soon as they were issued, the arrest warrants against the leaders of the LRA had some preventive impact; the LRA lost its safe haven in southern Sudan and there was a drastic decrease in the level of crimes in Northern Uganda; however, we must be conscious that such positive developments will disappear if the arrest warrants are not

implemented. The Court will lose its credibility and its deterrent impact. Securing the arrest of the remaining four LRA commanders is on all counts a priority goal. It is important for the victims in Uganda and southern Sudan: it is important for the deterrent impact of the Court; and it is important for the establishment of the law worldwide

Finally, in this context, I would note that the decision of the Security Council, in referring the Darfur situation to the ICC, has recognized that lasting peace and security in Darfur will require justice and accountability; this is also, in terms of prevention, an important message. As you know I have recently presented my evidence to the judges in relation to 2 named individuals and 51 counts of war crimes and crimes against humanity; our case unveils the existence of a system at work to commit massive crimes in Darfur, and we hope that this first case can be one aspect of a momentum to stop the violence in the region, an objective shared by all. In the context of multiple efforts in this regard, I will pursue my own, independent, judicial mandate,

based upon the criminal evidence we collect. But the contribution of all is needed.

III - The challenge ahead

As the Court enter a more operational phase of its activities, with arrest warrants having been issued, evidence presented to the Judges in the case of Darfur and judicial proceedings about to start in the DRC case, we are obviously faced with a new challenge. The law is a reality, but compliance is still very much a question mark.

Let me mention in particular in this context the peace and justice interaction.

As you know, many of the crimes under our jurisdiction occur in the context of ongoing armed conflicts; as a consequence there is an interlink between the delivery of justice and efforts to secure peace and reconciliation. This was actually foreseen in Rome where the drafters of the Statute introduced provisions which can come into play in such contexts:

they set up a high gravity threshold so that the ICC would only have jurisdiction for the most serious crimes of concern to the international community, they set up the complementarity regime which asserts the primary responsibility of states to define their own prosecutorial policy, and they also introduced article 16 which provides that the Security Council, acting under chapter VII, can suspend investigations or proceedings for a period of one year.

That being said, the decision taken in Rome in 1998 and ratified since then by 105 countries is clear: Lasting peace requires justice. The Rome Statue established a **new approach** where victims are entitled to both **justice** and **peace**. Consequently, it is essential in any conflict resolution initiative, especially when peace is negotiated before the justice process develops, that any solution be compatible with the Rome Statute. The States parties must be mindful of the mandate of the Court and not compromise on legality and accountability.

The Court depends on States parties and other actors such as IOs and NGOs to consistently reiterate the importance of respecting and upholding the law in public statements and bilateral and multilateral efforts.

Tomorrow we will address the 'carrot and stick' approach of the international community; it is extremely relevant for the ICC; the activity of the Court, especially arrest warrants are not just a way to bring people to the negotiating table; as I said earlier, arrest warrants must be implemented.

I am concerned by recurring debates over amnesties for persons sought by the Court, a solution that is not consistent with the Rome Statute, as well as temptations to use promises of immunity from the Court as a bargaining tool; those are still common occurrences and they undermine the law. This has been clearly addressed in statements made by the legal advisor of the UN to the UNSC, for which I am immensely grateful, emphasizing that the refusal to accept blanket amnesties for massive

crimes was a legal requirement, and not only a policy decision.

The ICC will of course respect the mandate of other actors; we firmly believe that in most situations we deal with – Uganda, DRC, Sudan – the people deserve comprehensive solutions where security is established, humanitarian assistance is delivered, development programmes are put in place; we will do our justice part. There is a need for mediation and political negotiation but those comprehensive approaches must absolutely remain within the boundaries of the legal framework established in Rome.

Ladies and Gentlemen,

Promoting respect and compliance for this legal framework cannot be achieved only through the work of Prosecutors and judges. The way ahead is certainly to build a network of individuals, organizations and States to this

end. The next 2 days will be important to reinforce our interaction. As demonstrated in the past by the work of Raphael Lemkin, even one person without official functions could contribute meaningfully.

Prevention has multiple facets. It includes of course the essential role of alerts and monitoring of massive violations that the High Commissioner for Human Rights performs, and where Juan Méndez has also played a role these past years; it includes the preventive deployment of peacekeepers; it includes the activities of UNODC doing legal education and training; it requires the support of negotiators who must help to re-establish the law in communities affected by genocide; it should involve all actors including the media and the private sector. As Prosecutor of the ICC, I am ready to work with all of you to ensure the effective implementation of our responsibility to protect.