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Center for American Progress

SPECIAL PRESENTATION

**SAMUEL DASH CONFERENCE ON HUMAN RIGHTS:
THE FUTURE OF HUMAN RIGHTS**

**“THE ROLE OF THE INTERNATIONAL CRIMINAL
COURT IN PREVENTING MASS ATROCITIES”**

INTRODUCTION BY:

**RICHARD GOLDSTONE, FORMER JUSTICE, CONSTITUTIONAL
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FROM THE JUDICIARY, GEORGETOWN UNIVERSITY LAW
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**LUIS MORENO-OCAMPO, CHIEF PROSECUTOR,
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**1:30 PM – 2:30 PM
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MR. WILLIAM SCHULZ: There are only a handful of true human rights heroes in the world, but we're privileged to have one of them with us this afternoon in the person of Justice Richard Goldstone, who will introduce the prosecutor. For nine years, Justice Goldstone served on the highest court in South Africa and he used the laws on the books at that time to dismantle the system of apartheid. He employed, for example, an underutilized power of judges to make unannounced visits to prisons.

The Goldstone Commission, which the justice chaired, was instrumental in helping contain violence during the transition to a post-apartheid South Africa. And of course, his appointment in 1994 as the first chief prosecutor of the war crime tribunals for the former Yugoslavia and Rwanda established new principles and precedents upon which all subsequent efforts to secure international justice have been based.

Shortly after his service to the tribunals, Justice Goldstone reflected on that experience, and he said, "In The Hague, we had 180 people in the prosecutor's office from forty nations all working together on a multinational, international prosecution, making new law, making new precedents, new admissibility of evidence, indictments that had never looked like any indictments issued before from any particular country. So really that was, I think, the main part of the excitement being involved in something that had never been attempted before, and it succeeded."

Indeed, it has succeeded and in no small part due to the man I'm proud to introduce to you, Georgetown Law Center's distinguished visiting professor, Justice Richard Goldstone. (Applause.)

MR. RICHARD GOLDSTONE: Well, thank you very much for an overgenerous introduction. It's wonderful to be here, and particularly, if I may say so, to be at a conference named for Sam Dash and to have Sarah Dash with us and her two daughters. Sam was a wonderful friend, not only to me, but a friend of South Africa in the darkest days of apartheid.

It is my great, great pleasure and privilege to introduce Luis Moreno-Ocampo, the prosecutor of the International Criminal Court. He rose to prominence in his own country, Argentina, and internationally, as the assistant prosecutor of the Argentinean National Commission on the Disappearance of Persons. That investigation led to what became known as the Trial of the Juntas. Nine senior figures, including three former heads of state, were prosecuted, and importantly, five were convicted. Over the following few years, Mr. Ocampo established a reputation for his willingness to go after the rich and powerful of Argentina. And that's easier said than done. One needs tremendous courage to do this sort of work in one's own country.

Amongst other notable prosecutions and trials in which he participated, he was the lead prosecutor with the review for the military trial for malpractice against the

commanders of the Falklands War. In 1992, Luis Moreno Ocampo went into private practice and started teaching criminal law at the University of Buenos Aires. I had the great pleasure on two occasions of co-teaching a course [with him] at Harvard Law School. It was there, I remember, that he first heard of his appointment as the first prosecutor of the International Criminal Court by the Assembly of States Parties.

His role as the first prosecutor of the ICC is not an enviable one. He had to set up an office capable of investigating and prosecuting huge crimes in multiple countries. He was well aware, I know, from the start that for the court to succeed, he had to garner the political support of important governments. He had to smooth the ruffled feathers of newly appointed judges who wanted work with which to occupy themselves--really a repetition of what I had to endure a number of years before in The Hague. He also had the problem, which I didn't have, fortunately, of strong opposition to the court from the United States and, in particular, from the Bush administration, which is a huge, huge disadvantage, I needn't tell this audience.

In any event, the court has now issued ten warrants of arrest on my count with respect to three situations, Uganda, the Democratic Republic of the Congo and Sudan. A fourth situation in the Central African Republic is currently under investigation. As I mentioned, I had the pleasure of teaching with Luis Moreno Ocampo at Harvard Law School and I've been in his company happily on many occasions, and I can vouch for both a lively and often naughty sense of humor. (Laughter.)

Luis, we look forward to your remarks today. (Applause.)

MR. LUIS MORENO-OCAMPO: Thank you, Richard, for your kind words and thank you for the invitation to be here with you. Ten years ago, countries from all over the world actively participated in the elaboration of a new and comprehensive body of law. They adopted the Rome Statute. Today, ten years later, just ten years later, the system created by the Rome Statute is in motion. It is operational and it is growing in impact.

Connected with the title of this conference, I will say prevention and deterrence are the heart of the statute. The preamble says my mission is to investigate and prosecute, to contribute to the prevention of future crimes. So it's an opportunity to establish a new forum to manage international violence.

And I would like to focus today on...Darfur because Darfur is a test for the international community; how we will manage violence; how we, the international community, will protect. I will be very interested to discuss with you how you and others...can maximize the impact of the court to stop crimes now and prevent future crimes in Darfur.

Let me present what I plan to do today... I would like to discuss three issues: briefly describe the legal design of the Rome Statute; second, briefly present you a

summary of the activities of the court during the last five years; and finally, the challenge of the Darfur case.

Let me start with the legal design. Sixty years ago, with the Nuremberg trials, those who commit massive crimes were held accountable before the international community and this was a landmark. But the world was not ready to transform such a landmark into an institution. The world would wait to witness two genocides, first in the Balkans and then in Rwanda, before the Security Council created the ad hoc tribunals for those specific situations. This paved the way for the establishment of the International Criminal Court.

So a few years later in 1998, in Rome, 160 states participated in the conference on the establishment of the International Criminal Court. Kofi Annan, then secretary general of the UN, opened the conference. He said – let me quote him: “We have before us an opportunity to take a monumental step in the name of human rights and the rule of law. We have an opportunity to create an institution that can save lives. We, who have also witnessed time and again in this century the worst crimes against humanity, have an opportunity to bequeath to the next century a powerful instrument of justice. Let us rise to the challenge. Let us give the succeeding generation this gift of hope. They will not forgive us if we fail.” That is what Kofi Annan said.

And, interestingly, against many predictions--because you know, when the Rome Convention started, they had 1,400 issues to discuss and decide in five weeks so many were thinking it will fail--the Rome drafters turned this concept into reality. They approved a treaty establishing a permanent and potentially worldwide system of international criminal justice. It's not just a court. They created a comprehensive framework.

Let me highlight some aspects of the statute. First, very important, substantial law has been codified in one detailed text. Second, 120 states approved and voted in favor of this definition of war crimes, genocide, crimes against humanity. And...they approved and reaffirmed a duty to prosecute perpetrators of these types of crimes. It's no more discretionary. It's a duty that the states are committed.

Third, to enforce, to ensure the end of impunity, the states created an independent and impartial international criminal court as a court of last resort to prosecute the most serious crimes. This court shall complement national activities and will step in when states fail to assume the responsibility. This is what we call the principle of complementarity. States are the main responsible. If they fail, the court will step in. That's the model.

Fourth, this model created a new scenario where, as its predecessors were limited in scope to a particular territory, the ICC, the Rome Statute jurisdiction, has been extended over crimes committed on the territory or by the nationals of 106 state parties. Even it can extend to the entire world, as the United Nations Security Council can refer situations anywhere in the world to the court, as was the case of Darfur.

And finally, but very important, because this makes the difference between a judicial system or a political system, the states gave the prosecutor the ability to trigger independently the jurisdiction of the court on the basis of Article 15 of the statute. So the decision to open [a] situation could be a judicial decision. The judge and the prosecutor could agree with no state referral, with no Security Council information. And that is a huge step ahead; it's a legal system.

Even more importantly, the Rome Statute proposed a new approach to solving conflict. Lasting peace requires justice. For centuries, conflicts were solved without legal constraints. Impunity for the worst criminals was the rule. The Rome Statute is different, offering [a] new tool, the law, the law applying in some circumstances by an independent and impartial court.

And it's important to understand this new design, how this is operating. As the first prosecutor of the International Criminal Court, I have been given a mandate to select situations and cases in the territory or committed by national state parties, or Security Council referrals, proceed with expeditious investigations and prosecute the most serious crimes. These are my three activities. This is my responsibility and I'll do my part in investigations, in the courtroom.

But the point I'd like to present today here is different...because the law established in Rome is not only for lawyers, prosecutors, defense counsel and the accused. The law also applies to political negotiators, military, educators, states, international organizations, all those involved in international conflict management. We have this idea clear. We have a convergence between them today. Let me prove this, but turn first to the implementation of the new design over the last five years.

So let me summarize what we did in the last five years to show what the court did and then the challenge, not just in the courtroom, the challenge outside the courtroom. I took office on 16th of June, 2003, as the first prosecutor. In those days, the selection of the situation to investigate was the most critical decision to be made. There were fears of frivolous decisions and frivolous prosecutions... What we did was apply the law, the criteria and procedures established by the statute. In this way, we started the cases.

When I took office, we had already received 472 communications from individuals and organizations from sixty five different countries. Most of them were straightforward to dismiss because they fell clearly outside the jurisdiction of the court. The bulk of communication received in those days involved allegations that the crime of aggression had taken place in the context of the war in Iraq. In fact, those allegations fell outside the subject matter jurisdiction of the court, and the court cannot exercise jurisdiction over aggression until the crime is defined and the conditions for the exercise of jurisdiction are set out. And as you know, there's a meeting that will take place probably at the end of 2009 who will try to discuss this topic...

In addition, there were allegations of war crimes committed in Iraq by U.S. troops, which were also outside the court jurisdictions since neither Iraq nor the U.S. is a state party to the statute. As you may know, we subsequently analyzed similar types of allegations against nationals of twenty-five states parties who were involved in the conflict in Iraq and found that they did not – we found cases of willful killings and tortures--but did not meet the gravity threshold or the complementarity criteria of the statute. So that was why we dismissed, even in these cases, the allegation of crimes in Iraq. These were the cases we were not taking.

Okay. What is our case? What we did at the beginning was an initial evaluation showing that in terms of gravity, in particular the number of victims of killing, the number of killings of crimes, there were jurisdictions for DRC [Democratic Republic of Congo] and Colombia. They were the most serious situations in the territory of states. After that, Northern Uganda was the next. However, there was a difference with regard to complementarity between DRC and Colombia. There were national proceedings in Colombia that required further analysis, whereas the DRC provisional government had only been established in June, 2003, and had no real control over the east of the country, thus limiting the capacity to implement accountability mechanism.

We took the opportunity of my first address to ask the state parties in September, 2003, to officially announce the independent selection of DRC as the first situation to be investigated. I had stated that I was ready to use my independent power to start an investigation there, but I invited the DRC government to publicly refer the case to my office. And a few months later, on March, 3, 2004, the person of DRC decided to refer the situation to my office. A few months later, we formally announced the decision to open the first investigation of the ICC. And after one month later was Northern Uganda and then the Security Council referred the case to us, and the last one is the Central African Republic.

The circumstances of each situation and case varied. But before making the decision to select the situation and open an investigation, we have to conclude that there is a reasonable basis to proceed and, to this effect, we have to assess all the information relevant to the different criteria established by the statute, meaning jurisdiction, complementarity, gravity and interest of justice.

In all circumstances, in all our situations, this is the only – it is only once all the factors in this check-list had been established--that we will open an investigation. The strict applications of those standards to all situations and analysis is the main duty of my office and of the court. The same requirements have been applied to all cases, including the referral from the Security Council. This strict respect for the law is a foundation of our independence and impartiality.

On this basis, in the last five years, we opened, I'd say, ...investigations in four situations, the Democratic Republic of Congo, Northern Uganda, Darfur and the Central African Republic, all countries still engulfed to various degrees in conflict. We also

analyzed and dismissed the situation in Venezuela, as I say, the activities of twenty-five states parties in Iraq.

In this area of preliminary examination, we are currently monitoring all the situations in three different continents... As of today, the judges of the court have issued ten arrest warrants, five against Joseph Kony and the four top commanders of the Lord's Resistance Army in Northern Uganda; again, the top leaders of three different militias in Ituri in the DRC; and again, Ahmed Haroun, the Sudanese minister, and Ali Kushayb, the militia Janjaweed leader in Darfur. More arrest warrants will be requested before the end of this year.

In addition, the modern system of victim participation envisioned in the statute is working. Victims are participating in the proceedings and these will be a key part in the enduring legitimacy of the court. In the coming weeks...the Appeal Chamber will make a seminal decision defining details in this regard of victim participation. There are three prisoners in custody in the Netherlands today. Our first trial, with charges focused on the use of child soldiers, will start on 24 of June.

I will say, after five years, the Rome Statute is in motion. And this is an achievement but also creating new challenges because all the actors, in particular states and international organizations, still have to adjust to the new legal framework. They have to commit consistently to enforce the judicial decisions, to enforce the judicial decisions to maximize the efficiency... The statute set legal limits and the political actors have to respect them but, most importantly, enforce them, and that is a real, real new challenge.

Those I mentioned are our main challenges today and I will illustrate them with the example of the Darfur investigation. I could also have used the example of Northern Uganda. Maybe the next time you invite me, I will do it. (Laughter.) ...But I will focus in Darfur.

Darfur is a case in which, as you know, on March, 2005, the Security Council, recognizing that lasting peace required justice, decided to refer the case of Darfur to the new International Criminal Court. And this is important because for the first time, the peace and security system in the hands of the Security Council was connected with the justice system represented by the ICC. On June 1st, after the analysis I have mentioned, after assessed the jurisdiction, the complementarity, the gravity and in the interest of justice, we decided to open the investigation.

For twenty months, we investigated the worst crimes committed in Darfur. We had the benefit to receive the documents collected by the UN Commission of Inquiry, but we also collected information from the National Commission – (unintelligible) – of the Sudan, but mostly, we interviewed victims. We did not go to Darfur to interview the victims because we had the duty to protect them and we cannot protect them in Darfur. So our challenge was how to investigate massive crimes without visiting the crime scene?

And we screened witnesses around the world. We identified more than 600 and we finally took the testimony of 100 witnesses in seventeen countries.

And interestingly, victims want to tell us their stories. They were proud to tell us their stories, even telling us very sad stories. One woman described how they killed her baby and, after, they raped her. The man told us, “They raped my daughter, eight-year-old daughter, but they forced me to watch when they were raping my daughter. I was asking ‘Why, why?’” And this man was happy to tell us this story. And we turned those stories into evidence, evidence unveiling a well organized system of persecution against the civilian population in Darfur.

Let me be clear. The situation in Darfur is neither the result of climate change nor the consequence of intertribal clashes. It’s a planned operation. The evidence collected in the first case highlighted the role of Ahmed Haroun. In 2003, Ahmed Haroun was appointed minister of state for the interior of the Sudan and decided that he was the head of the Darfur security desk. He coordinated the attacks carried out jointly by the Sudanese armed forces and militia Janjaweed who were incorporated into the popular police force and popular defense force.

So what we call militia Janjaweed are in part, in fact, part of the state’s apparatus and Haroun coordinates these activities. He recruits, arms and incites Militia Janjaweed leaders to attack villages. Ali Kushayb is one of these leaders and he commanded attacks in the four villages that we identified in our investigations. And with Ahmed Haroun coordination, more than 2.5 million Darfuris have been forced out of their homes into camps. They were forced to leave their land, their homes, their cattle. Their villages were burned down and the man who produced this was the minister for interior.

There’s something I’d like to emphasize because living in a country like this, it’s difficult to imagine. Imagine you have someone in your family was raped, you went to the police, and the police told you “Yes, we’ll rape all your family and yourself.” What are you going to do? The first time Ahmed Haroun, as minister for interior, met with Darfur, they told him, “We need you here; we are under attack.” And they say, “You are wrong; I will not protect you. You are my enemy.” So what will you do if your state, instead of protecting you, attacks you? What can you do?

That’s why they need an International Criminal Court. That’s why the Darfurians need the international community, but then, we have to learn how to do it, how to protect them. Without us, they will be destroyed.

We presented our case to the judges in February, 2007, and they issued an arrest warrant against Ahmed Haroun, Ali Kushayb for fifty one counts of war crimes and crimes against humanity on 27 April, 2007... So Haroun and Kushayb had to stay inside Sudan. As soon as they move, they will be arrested. But the government of Sudan has refused to arrest [them], even though they had the legal obligation to arrest Haroun and Kushayb, and to refer them to the court. They are refusing to do it.

In June 2007, I briefed the Security Council and urged the international community to call upon the government of Sudan to arrest Haroun. At that time, right after the arrest warrant was issued, there was some pressure on the government of Sudan. At that time, there were discussions in Khartoum on the possibility to surrender Haroun. There were considering this. They had a committee to define the policy. They sent to me ambassadors to talk to me.

But the issue of the arrest warrant was then out off the agenda of the international community and that, for me, is the issue. Justice was not on the agenda of the Security Council trip to Khartoum following my report. The term of reference called the Sudanese government to cooperate on humanitarian aid, security and economic reforms, not justice. Justice was not mentioned.

In the UN secretary general's subsequent report on Darfur, where the UN developed a three-prong approach with – there were humanitarian, political and security components only, not justice. And the problem is it's not just what message is this violence bringing.... After a visit by the secretary general to Khartoum in August, Ahmed Haroun was promoted to head of the Human Rights Investigation Committee in the Sudan. In December 2007, I reported again to the Security Council. This time, I described the present crimes, not the crimes committed in 2004, the present crimes.

In the camps, 2.5 million people displaced are subject to persecution and abuses. Far from disarming the militia Janjaweed, as it committed to the Security Council and Security Council mandate also – there's a resolution on that – the government of the Sudan has, for the most part, integrated them into its security apparatus, and has stationed them in the vicinity of camps, and they are in charge of the rape of women when they leave the camps. And this is not intertribal clash. It's a well designed plan.

In the camps, 2.5 million people are deliberately kept in a state of destitution. It's a planned destitution. Obstacles to the delivery of aid are part of the patterns of attack of these people. They were removed from their land, they have no means to survive, and they are not receiving food from part of the members of the government, and international humanitarian workers are being hindered. That's the situation.

In the camps, 2.5 million people are deliberately kept in a state of insecurity, surrounded by hostile forces, threatened with forced relocation to hostile territory now. The Sudanese minister of humanitarian affairs should protect the camps and facilitate the delivery of aid. He does not. He will not because since 2005, the minister of state for humanitarian affairs is Ahmed Haroun, the same man – the same man – we alleged – [responsible for]...attacks on civilians and [who] frced people out of their homes into the camps is today in charge of the camps and controlling the fate of his victims. Ahmed Haroun is today deciding how much food goes to the camps, who can go there and who cannot.

And today, his victims are faced with two options: remaining under attack in the camps or going back to hostile territory. They are left with no hope for the present and no

prospect for the future. This is how the slow destruction of an entire community is pursued in full sight of the international community. It's obvious that Sudan is not fulfilling its duty to protect its citizens and it's allowing members of the government to attack them.

In...2004, we witnessed the first phase of the criminal plan coordinated by Ahmed Haroun. A million people were forced into camps. In the second phase, happening right now in front of our eyes, the victims are attacked in the camps and, again, Ahmed Haroun is a key actor, but it's obvious he's not alone. Failure to take any steps to investigate or arrest him, failure to remove him from office are, for me, evidence, the clear indicia of the support he receives by other higher officials.

And my office will proceed to investigate the second case: who is bearing today the responsibility for ongoing attacks against civilians in Darfur? Who is maintaining Haroun in a position to commit crime? Who is instructing him? Who is protecting him? This will be evidence I will use in my second case in Darfur.

So let me finalize, because I think this is a case I'd like to present to you to get your attention. We have to learn how to manage these problems. There are new situations here. There is information that's clear. We have people in these communities in the U.S. and in Europe making the point, we have the new court doing something, but we are not solving the problem yet.

So that's why I want you to think how to manage this. In the case of Darfur, all member states of the UN are bound by the same commitment: the Security Council referral. It's not about state parties or Rome Statute. This is why the Darfur is such a crucial test. We're testing a new model to control violence and it's a test for our commitment to use the law to stop atrocities.

I ask the Security Council for consistency. I ask the Security Council to send a strong and unanimous message to the government of the Sudan requesting compliance with Resolution 1593, requesting the execution of the arrest warrant. The same consistency is needed throughout the UN and the states parties of the UN. It is both inaccurate and confusing to convey in any way to the government of the Sudan that that arrest warrant, and the obligation to comply with this resolution, will go away. The arrest warrant will not go away...

The only realistic and efficient solution today is to request to remove and arrest Haroun as a first step to any solution. This will send a signal to the perpetrators of crimes in Darfur that the international community is not only watching, but will hold them accountable for their actions. This can make a difference, because this can break the criminal system. What is at stake is simple: the life or death of 2.5 million people. And I believe we can do something to avoid this. Thank you very much. (Applause.)

MR. SCHULZ: Thank you, Mr. Prosecutor. We're now going to open the floor for questions with the one caveat that Mr. Ocampo has made clear that he will not

comment on the prospects for U.S. ratification of the Rome Statute, or engage in general debate about the ICC vis-à-vis the U.S. He's not here to entangle himself in political debates, but to answer questions about the court, cases before the court, larger issues of international justice.

And we have our first questioner from a great champion of human rights..., the columnist and reporter for the *Washington Post*, Nora Boustany. Nora, thank you for joining us.

Q: Good to see you again, Mr. Prosecutor. Can we extrapolate from what you said on the second phase of investigations into Darfur that you are going after President Bashir?

MR. OCAMPO: I followed the evidence, and I will inform about my case to the judges. (Laughter.)

Q: One more question, please, and then I'll allow others. The deadline for signing the agreement between the government of Uganda and the Lord's Resistance Army on March 31st has come and gone. What can you tell us about what has happened since then? I know what your position is. Mr. Kony's place is in the dark. But have there been any international negotiations beyond the ones we know about that may lead to the signing of this agreement, or is it just a mirage?

MR. OCAMPO: We are not part of a peace agreement. We are not a member of this. We are not discussing this issue, so I cannot talk about the peace agreement. What I can tell you is, yes, we are still collecting information about what they are doing and where they are. What is a concern to me is the denying of the reality. They are looking to sign a piece of paper, and at the same time, Joseph Kony keeps hundreds of children abducted. Even UNICEF, Jan Egeland, and the special representative of the secretary general for children, were requesting to release these children for the last year and a half.

In addition, we have consistent information that Joseph Kony killed the second in command, Vincent Otti, and the reason was because Vincent Otti was eager to do some kind of demobilization process. And third, we have information that they are moving from Uganda parts into the African Republic and they are abducting people there. So that is the real situation. And I hope the state could mobilize to arrest Joseph Kony. Arrest Joseph Kony, and you will have justice and peace tomorrow.

Q: Thank you.

MR. SCHULZ: We have about ten minutes so we'll go back and forth. Please, identify yourself, if you would.

Q: My name is Trevor Keck. I work for the Friends Committee on National Legislation. We're a Quaker lobby. And thank you very much for your presentation – very good. I think you really laid out well the difficulties of building a case in Darfur

where you actually have the parties responsible for the violence being protected by the state.

And so my question for you is, do you think there is any way that, in fact, ICC arrest warrants could, in fact, actually prolong a conflict like the one in Darfur where you have parties that are actually being protected by the state? Where is the incentive for them to relinquish the violence? That's my question.

MR. OCAMPO: I think what would prolong the conflict is to keep committing crimes. Let me use a different example. Suppose you have a babysitter who's raping each night your baby. What will you do? Do you stop the crime or do you try to discuss with her that you decided to put a camera in the room... And of course, she will discuss "No, no, no, the camera could not be possible." It may be a Japanese camera, may be a Chinese camera. So you'll discuss for months the camera and each night she's raping your baby. So the problem is not talking about the crime. The problem is denying the crimes. That's my problem.

Q: Hi. I'm Heather Hamilton... former co-chair of the Washington Working Group on the International Criminal Court. And I was wondering about the upcoming meeting for review of the statute and what role non-state parties can play in that? And what are some of the critical issues that will be on the table, both the crime of aggression, and what else is going to be on the table?

MR. OCAMPO: I'll disappoint you because I have so many problems that I try to not be involved in problems that are not my problems. So I know almost nothing about this but, probably, you can play a role so non-state party would participate in some way and it's important but I cannot provide you information on this. I'm sorry.

Q: I'm Rachel Smith. I'm a... student here at Georgetown University Law Center and you partially answered my question already when you responded to the gentleman over there but it was about the demands of some leaders that they'll stop the conflict if the ICC withdraws their arrest warrants, and how you respond to that, given what you talked about with the goal of prevention and whether that could prevent more deaths. I sense I know your answer already.

MR. OCAMPO: No, but let me elaborate maybe. I am the criminal prosecutor. I'm not involved in political negotiations but I know all the crimes committed and that's what I see. To solve the problem, you have to recognize the problem, and what I see, what you cannot do is deny the problem. And of course, I'm not saying it's easy, because Kony is a man protected by a militia. He has approximately probably 700 persons around him. And Haroun is a person who's still a minister protected by his own government.

So I'm not saying it's easy and that's why we need to think on this. And I think it's very important for the lawyers to think on this, because basically ICC is – yes, it's a criminal justice system. In court, the rules are similar. It's easy. The problem is, it's a

court with no state. The state has to respect the court decision. And that is what you have to focus.

Remember, in this country, in the 19th century, President Jackson ignored...how to enforce Supreme Court decisions. But today, no one has any doubt. The Supreme Court ruling had to be respected. So the same evolution is in the international law arena. But then we need legal scholars thinking on this, not just what happens inside the court. And then the law has to be respected. That's the way to manage violence.

And Kony and Haroun are the cases in which you have to show the commitment. We have to show what Kofi Annan said, it's an opportunity for us. So we have to create a solution for this, not just change because, oh, it's difficult. If I talk with Sudan about arresting Haroun, they are angry. Okay. Of course, if you talk with your rapist babysitter, stop raping my baby, she will be angry. She will deny, the same. So we have to find solutions. And I think you in Washington could be very important. You have to discuss this topic and find solutions. We need to approach this differently.

Q: Thank you.

Q: I'm Beshoy Lami (ph), half Egyptian, half Sudanese. This time, I would say I'm sure that you have seen a lot of documentary films about Darfur. I have a lot of them. Anyway, two scenes I have seen which really prove that Bashir is part in this game. The air force crafts were used to bomb a village in Darfur; and second, the Sudanese soldiers used to destroy food storage at the areas so that if the people were not killed by guns, they were killed by starvation. So I would say there are enough proofs about that.

MR. OCAMPO: There are no doubts.

Q: Yes, he is behind this.

Q: David Hawk. Have there been, or do you anticipate, developments in the way the court will handle continuing violations, that is, criminal acts that were initiated before the Rome Statute took effect but that continue after the court was set up?

MR. OCAMPO: I'm not sure if I understand your question but we cannot investigate crimes committed before July 1st, 2002. We can investigate any crime committed after July 1st, 2002. So that is...the jurisdiction of the court.

Q: What if an enforced disappearance took place in 2000 but the person is still unaccounted for?

MR. OCAMPO: No, that was a big issue in Rome.

Q: I know. Are there developments in it?

MR. OCAMPO: No. And the clear decision was even disappearances had to start. They kind of have to start to be committed after July 1st, 2002, nothing before. So the agreement was for the future, not for the past.

Q: Hi. I'm Jonathan Fiver.. You said that the justice was not on the agenda of the Security Council. I'm still unclear about this. Can you briefly restate just for my clarification what the Security Council should have done?

MR. OCAMPO: Yes. In June, 2007, I went to the Security Council; I briefed them. As I told you here, I explained to them: Mr. Haroun is indicted and he's still a minister in humanitarian affairs. And they were shocked, as some of you were shocked. In those days, it was the first time I said that, so it was a big shock. And they said, but it's sad, because we discussed the terms of references to our visit to Khartoum, and we did not include justice... And they went there and they did not discuss justice.

And the problem is before that one of my tools – because I got cooperation from the Sudan government before. I interviewed a general in Khartoum as a suspect. I went to Khartoum, and we told the general, you have the right to be silent, the right to be – a lawyer – imagine. It's difficult for a state to allow me to do that. They did it. One of the reasons was I was telling them, if you are not allowing me to interview this person, I will report to the Security Council that you are not cooperating. So the report to the Security Council was one of the tools I used to receive some kind of cooperation from the Sudan. But as soon as they discovered that the Security Council will not be really insisting on this, they would just ignore us. So normally, the criminal court marginalized the criminals. They were trying to marginalize us.

In fact, in September, there was a meeting in the UN with eighteen foreign affair ministers and at the end of the meeting, the Sudanese ambassador of the UN said, in the meeting, "No one talks about justice. The only one who talks about justice is Ocampo." And that's, for me, the problem. We are like in 1830, when President Jackson said, the Supreme Court rules, the Supreme Court will implement the decision. That's the problem we have. We have a primitive system. And that is why we have to do something to make them work...

So I don't know how we can do it... But this is a different dimension, and what I found to be clear is it's like I have two types of constituencies: the lawyers focused on the law and especially in the courtroom, and international relation people focused on the idea what he's doing....

And it's like two groups who are not connected, are like autistic. And I need you connecting both and saying, "Hey, in fact, the law is the tool we use to manage violence in the national system. Now, we are trying to see if we can use the same tool to manage this international violence." But we have to rethink the problem. And that would be the message I'm trying to convey. And Darfur is a test, it's an opportunity, but also is immediate because two million people will die if not.

MR.SCHULZ: Okay. We have time for two last questions. Yes, please.

Q: Hi. I'm Jacob and I'm a law student here at Georgetown. There's been a lot of theoretical debate about the potential return value of the ICC. I wanted to ask if, given that there have been indictments handed down, and that there's a trial just around the corner of the Itari warlords, have you seen – has your office, in its ongoing investigation in the DRC, seen any change on the ground, any actual changes in behavior as a result of those indictments?

MR. OCAMPO: Yes, that's the point. The ICC in a few years, the ICC is promoting changes. I would say in DRC, many militias have changed in their behavior to use child soldiers. Even people in the community are discussing, because sometimes, the same people in the community are providing the children to the militias. They are discussing that. But interesting, and I think it was the ICC is such an incredible good tool.

The case of Thomas Lubanga in DRC has impact in Colombia where the FARC are using child soldiers. And so there's a discussion on child soldiers in Colombia. In addition to that, I can quote you different examples of people talking in Somalia..., warlords are threatening each other to present the cases before the court. And in the last conflict between Colombia, Ecuador and Venezuela, President Uribe from Colombia, President Chavez [from Venezuela], were talking about denouncing each other before the ICC. And that, in some way, is showing that we are existing. We have some impact.

And I will say more. There are legislations passed by more than forty countries that are just seeing the interaction between the states and international organizations and, probably, the most important thing is armies all over the world, including non-state parties, are adjusting the rules to the ICC rules. And that, I think, is the most important change because then, the tiny court in The Hague is promoting a huge change in all the... world. And in fact, if you think, it's rational, because the law is a different – makes a difference between the policemen or a soldier and a criminal. So you need the law to assert what you are. And now, that's why the Rome Treaty is so important. It's not just a court; it's the law. The states have agreement on the law and now, all the armed forces in the world are adjusting.

So I believe there are so many positive aspects to highlight that we also have to say, "Okay, this is working well."....

MR. SCHULZ: Last question.

Q: Thank you very much. My name is Norm Penalavitch (ph). I was very happy to hear you say that the ICC is not just a court. It's also a system of justice and related to outreach, it's been commented that in Yugoslavia and Rwanda, outreach started sort of later on to affect the populations in Sierra Leone. David Crane and Robin Vincent got a lot of plaudits for beginning outreach early, and in Cambodia, that's something that a lot of groups are pushing right now.

And I'm curious, given that you're based in the Hague, and I know you discussed victim participation, how you see the court as a system of justice, particularly with regard to victims and how information that may – facts and truth that are learned during trials in the Hague and in your office can then be dealt with and that kind of can be disseminated out to effected populations?

MR. OCAMPO: Thank you for the question. It's a very important question because how the court is meaningful for the victims, for the society, we are working for them. So I think it's a very important issue, but also very difficult, and I believe people are dismissing the difficulties to explain the importance of the law in society of deeply divided. Inside, well, the people feel, oh, they said they were defending me. And I used to normally explain how difficult it is to convey this message that it is not enough to go to the TV or organize meetings. I usually use my own example.

In Argentina, when I was investigating the crimes committed by the military junta, my mother did not believe me. She was against me. So I could not convince my mother, okay? That's how difficult it is. So for six months, I was investigating the crimes and when I talked to her, she said, "I don't know. You're wrong." My grandfather was a general, so for my mother, generals are nice persons. So my mother loved General Videla. She was with him in – General Videla was a person in the country, the head of the military junta in those days-- and she loved him. She was in the church with him. She's a very religious person. He's protecting us from the guerrillas.

And I could not convince her and I was her son. Interestingly, that is why I believed in this idea of trials. After the trial started, my mother called me two weeks later. She called me, and she said, "I still love General Videla, but you were right. (Laughter.) He got to be in jail." So the story is just to show you, yes, it's a big issue, but it's difficult to convince them, okay? But trials will help. Thank you.

MR.SCHULZ : Join me in thanking the prosecutor. (Applause.)