

Memorandum – Mémorandum

TO / A: Interested Parties	FROM / DE: Luis Moreno-Ocampo
CC:	
DATE: 20 April 2004	PAGES: 7
RE: <i>Background information of the activities of the Office of the Prosecutor</i>	

**An Overview of the Strategy and Activities of the
Office of the Prosecutor**

Introduction

We have taken several strategic decisions to guide the Office, on issues ranging from the design of our organizational structure and the recruitment of our staff; to the selection of our first cases; to the planning of our investigation and prosecution strategy. Our investigations strategy, in broad terms, specifies that we will identify the persons most responsible, assemble the best evidence in the shortest timetable possible, and bring charges which are few in number, in order to keep proceedings on a fast track.

Strategic Decisions

Our strategy includes the decision to focus our resources on the investigation and prosecution of persons bearing the greatest responsibility for the crimes within our jurisdiction. This means that the Office of the Prosecutor (OTP) will prosecute those without whose participation these crimes would not have taken place, instead of focusing on mid- or low-level perpetrators.

We have also committed ourselves to the complementarity principle enshrined in the Rome Statute, and have decisively sought to have a positive approach to it. Rather than competing with States for jurisdiction, we will work constructively with States to encourage genuine proceedings where possible. In some cases, a consensual division of labour with a territorial State will be the most appropriate response to mass crimes. We have already had positive results with this approach, as can be seen in the Ugandan referral of the situation in the country.

Our Office is being organized with a lean and flexible structure, so that it can adapt quickly to the changing needs of our caseload, and so that external and local expertise can be properly harnessed.

This memo focuses on the priorities of our Office:

- *To build the OTP team*
- *To start the investigation in Northern Uganda*
- *To prepare the investigation in Ituri*
- *To improve understanding with States, NGOs, and the international community at large*

Building the OTP Team

Recruitment

Since my arrival in June 2003, we have been working quickly but carefully at building an efficient Office, learning from our accumulated experience and expert consultations.

We have placed the greatest emphasis on the statutory requirements of efficiency, competence and integrity. My goal has been to recruit the highest quality people, emphasizing team-building, energy and commitment to the mandate of the Office. This focus on quality is the way to ensure success and to preserve our independence. There have been some vital additions to our operational team.

Serge Brammertz has been elected by the Assembly of States Parties as the Deputy Prosecutor for Investigations. He was a Federal Prosecutor in Belgium and was selected out of applications from over 45 countries. Since his arrival, recruitment has progressed for the investigation teams and the development of investigation strategies. One recent addition to the Division includes Michel de Smedt, who was a senior police officer in Belgium for eighteen years and a successful private consultant, giving public management advice in European and African countries. Michel will be the Chief of the Analysis Section in the Investigation Division.

In the Prosecution Division, one Senior Prosecutor has already arrived. Christine Chung joins us after twelve years of experience as a federal prosecutor in the Southern District of Manhattan. During the last two years she was chief of the appeals section. Two more Senior Prosecutors will be arriving in the coming year: Ekkehard Withopf, formerly a German prosecutor and currently acting Senior Trial Attorney in the ICTY, will join us in July. Andrew Cayley, formerly a military lawyer in the UK, and currently a Senior Trial Attorney in the ICTY, will join us in ten months. Fabricio Guariglia will be our Senior Appeals Counsel. He was one of the drafters of the Rome Statute, worked for the ICTY for five years, and now teaches at the London School of Economics. The Office benefits from this diverse wealth of experiences.

In addition, we have called for nominations for the Deputy Prosecutor responsible for Prosecutions. In our recruitment, we are particularly bearing in mind the need for geographic and gender representation.

We are working to avoid the mistakes of previous institutions that have created large bureaucracies. We are building a small flexible Office, which will call upon networks of support as needed. Local people in affected areas will not be excluded but rather will be recruited as the need arises, so that we benefit from their particular knowledge and better explain our activities.

Structure

Our Office faces unprecedented challenges, given our potentially wide-reaching but complementary jurisdiction. Our experiences in the last months have guided us in shaping the best structure to carry out this mission. The new structure includes three functional divisions:

- *The Prosecution Division*, with trial and appeals lawyers who will present cases before the judges. This division is concerned with classic prosecutorial work, although some of the procedures being applied are new.
- *The Investigation Division*, a group of lawyers, investigators, and experts working together in special teams tailored to each specific situation. Some will be based in headquarters and others will be deployed in the field. They will have to conduct investigations of massive cases under extreme conditions in vastly different parts of the world.
- *The Jurisdiction, Complementarity and Cooperation Division (JCCD)* deals with the fundamental issues of jurisdiction, admissibility, and cooperation, which are the essential foundations for any effective investigation and prosecution. The Division brings together the analytical and legal expertise for the analysis of jurisdictional and admissibility questions and also provides dedicated specialist work in building networks of international cooperation.

These operational divisions are complemented by sections and units providing assistance and expertise on particular issues.

We have also established an Executive Committee that will advise the Prosecutor, particularly on decisions to move a situation from one stage to another (for example, from analysis to investigation to prosecution). The Executive Committee includes the Deputy Prosecutors for Investigations and Prosecutions and the head of the JCCD, and is chaired by the Prosecutor. This is another improvement on other institutions, and will ensure that the heads of each division are aware of and involved in major decisions, thereby improving coordination.

The structure is designed to respond to the particular challenges faced by the ICC. In particular, the creation of the JCCD flowed from the lessons learned in our first few months, which highlighted differences in the main functions required of our Office.

First, unlike any previous international tribunals, the Office has an open-ended jurisdiction, requiring analysis of multiple situations of potential jurisdiction. Second, unlike other national and international tribunals, the ICC has a complementary jurisdiction, requiring assessment of national proceedings. Each of these tasks requires specialist legal and analytical expertise.

Unlike UN tribunals, it does not have the pre-established backing of Chapter VII enforcement powers under the UN Charter. Thus, we have to work to obtain access to the operational field.

In addition, unlike a national prosecution service, the Office does not have its own police and national system to rely upon. Thus it is essential that we have dedicated our efforts to building a network of support and cooperation with States and organisations.

Interaction with Other Organs

We have established regular contact with the Registry and other organs in order to ensure smooth coordination where necessary. Currently, we are involved in the preparation of the budget. It requires agreements about the times, the distinction between core and conditional activities, budgetary stages, and clear definitions of the

mission of each unit. Shared tasks such as working on the budget have been a productive exercise, and serve as an example that while we may have separate missions, there are certainly instances where we will have to integrate our activities.

Priority Situations

I expect to initiate investigations in two situations in 2004, although of course the final decisions remain to be taken formally. It is important to take the correct steps, with good practices and good foundations of cooperation.

In the early experiences of the ICTY, the Office of the Prosecutor was under undue pressure to produce hurried investigations and indictments. The result was a set of practices and decisions that were subsequently criticized and that took considerable time to correct. Our approach is to take considered decisions at each step and to move from success to success.

In these early stages, we are continually facing new issues. We have to adopt sound decisions, and we are learning from the experience.

Analysis

Because of the scope of the territorial and personal jurisdiction of the Court, there may at any time be several situations that could potentially warrant investigation by the ICC. Thus, a constant baseline activity is to engage in analysis of situations of interest. Such analysis is required under Article 15 of the Rome Statute and Rule 104 (Rules of Procedure and Evidence).

In order to promote public understanding of our approach, the OTP will be publishing revised regulations and a paper explaining how we carry out analysis of information.

To give a brief description, analysis is carried out in three phases. The first phase of analysis is an initial screening to identify those communications that manifestly do not provide any basis for further action. Once the initial backlog of communications is cleared, the Office will endeavor to ensure that this first phase is completed and acknowledgements are sent within one month of receipt of a communication.

The second phase of analysis is a more detailed legal and factual analysis of significant communications. This is carried out by JCCD under supervision of the Executive Committee and myself, with the Investigation Division contributing any accumulated information about the alleged crimes.

The most serious situations will proceed to the third phase, where a joint team is formed between the Investigation Division and JCCD, under supervision of the Executive Committee and the Prosecutor. This third phase, advanced analysis, will include advanced gathering of information and preparatory work such as development of an investigation plan. In this way, any decision to initiate an investigation will be well-informed, taking into account not only jurisdiction and admissibility but also any special difficulties, the prospects for success and with concrete plans for how to proceed.

During phases I and II, we will collect information from open sources, and eventually seek information from States or NGOs.

Two situations—Uganda and Ituri—are now in an advanced stage of analysis and preparation, in order to gather all information necessary to prepare an investigation plan and to make sure we have the foundations for a successful investigation. I will take the decision to initiate an investigation once we have enough information to see that we have strong prospects for a successful investigation.

Uganda

Uganda has made the first referral of a situation by a State Party. We welcome this referral, which is a historic occasion for the Court. We are also pleased that a State referring a situation within its own territory is a great sign of confidence and trust in the Court.

Where a State refers a situation within its own territory, this comes with a strong expectation that the State will give its support and cooperation, including the provision of security for ICC investigation teams. This is a crucial issue for my Office, given the potential difficulties for any investigation in the unstable situations so often faced by the ICC.

The referral was initially made in confidence. In February, I was invited by the President of Uganda to a meeting to discuss the manner in which the government will cooperate with our investigations. We decided that the meeting should not be secret and that it would be appropriate to inform the public.

The Prosecutor of the ICC is in a very different position from a national prosecutor. A national prosecutor may be seen to prejudice his or her independence if contacts are made with the political authorities of the State. In contrast, as the ICC Prosecutor, I will often need to enter into dialogue with heads of State and government and with other agencies of a State in order to carry out my mandate. This may include meetings to receive referrals, to discuss modalities of cooperation, and to discuss prospects for a State's own authorities taking proceedings themselves. Consistent with our published policy paper, I intend to pursue constructive relations with States. We never include in these conversations our selection of the cases in the situation referred. The distinction between the JCCD and the Investigation Division helps us to protect our independence and impartiality.

Accordingly, we are analyzing alleged crimes carried out in northern Uganda in an independent and impartial way. I will continue to receive information from any source on crimes within the jurisdiction of the Court.

In their letter of referral, the Ugandan government referred the "situation concerning the Lord's Resistance Army." We explained to them that the scope of the referral will be interpreted in accordance with the principles underlying the Rome Statute. I have advised the Ugandan authorities of this approach. According to the BBC, President Museveni pledged to cooperate with the ICC if it investigates his army's alleged involvement in war crimes.

He has said: "I am ready to be investigated for war crimes...and if any of our people were involved in any crimes, we will give him up to be tried by the ICC...And in any case, if such cases are brought to our attention, we will try them ourselves."

The OTP is in an advanced stage of analysis and planning, gathering relevant information on crimes, admissibility, interests of justice, and prospects for cooperation, and laying in place an investigation plan and the foundations for cooperation. The formal decision whether to initiate an investigation will be taken as soon as possible.

The situation presents a number of difficult considerations. For example, we are talking with local groups to discuss their concerns about the role of international justice.

We will face extreme challenges in attempting to investigate in a war zone. Ensuring the safety and security of my investigation teams is a fundamental priority. We are working to obtain immunity agreements.

The issue of how to carry out arrests is another major consideration. The government of Uganda has faced great difficulties carrying out arrests, so we are exploring other possibilities.

Ituri

The situation in Ituri remains a priority for my Office. The Ugandan referral has received considerable media attention, but it has not altered the importance we place on the massive crimes in Ituri.

We have proposed a consensual division of labour with the DRC. We would contribute by prosecuting the leaders who bear the greatest responsibility. National authorities, with the assistance of the international community, could implement appropriate mechanisms to address other responsible individuals. The DRC has responded with a letter affirming that such a division of labour would be welcomed.

The situation on the ground in Ituri remains extremely complex. There are several groups operating in the territory that may be responsible for serious international crimes.

There are also initiatives underway to promote a negotiated settlement to the conflict, demobilization and disarmament. We want to be sure that the timing of any announcement does not derail the current fragile stability in the region and therefore lead to further killings. Article 53 of the Statute requires that the Prosecutor consider the interests of victims. My basic duty is to avoid further bloodshed. In this sense, we have the ability to wait to choose the moment to start some of the cases. As a permanent court, the ICC can work on a situation for as long as needed.

We are exploring cooperation with MONUC. The Court's Presidency is negotiating the Relationship Agreement with the UN, which is now a key concern. We will continue to foster the necessary support from the main partners, and we will be making key decisions on whether to initiate and how to initiate in the near future.

Cooperation With States and Civil Society

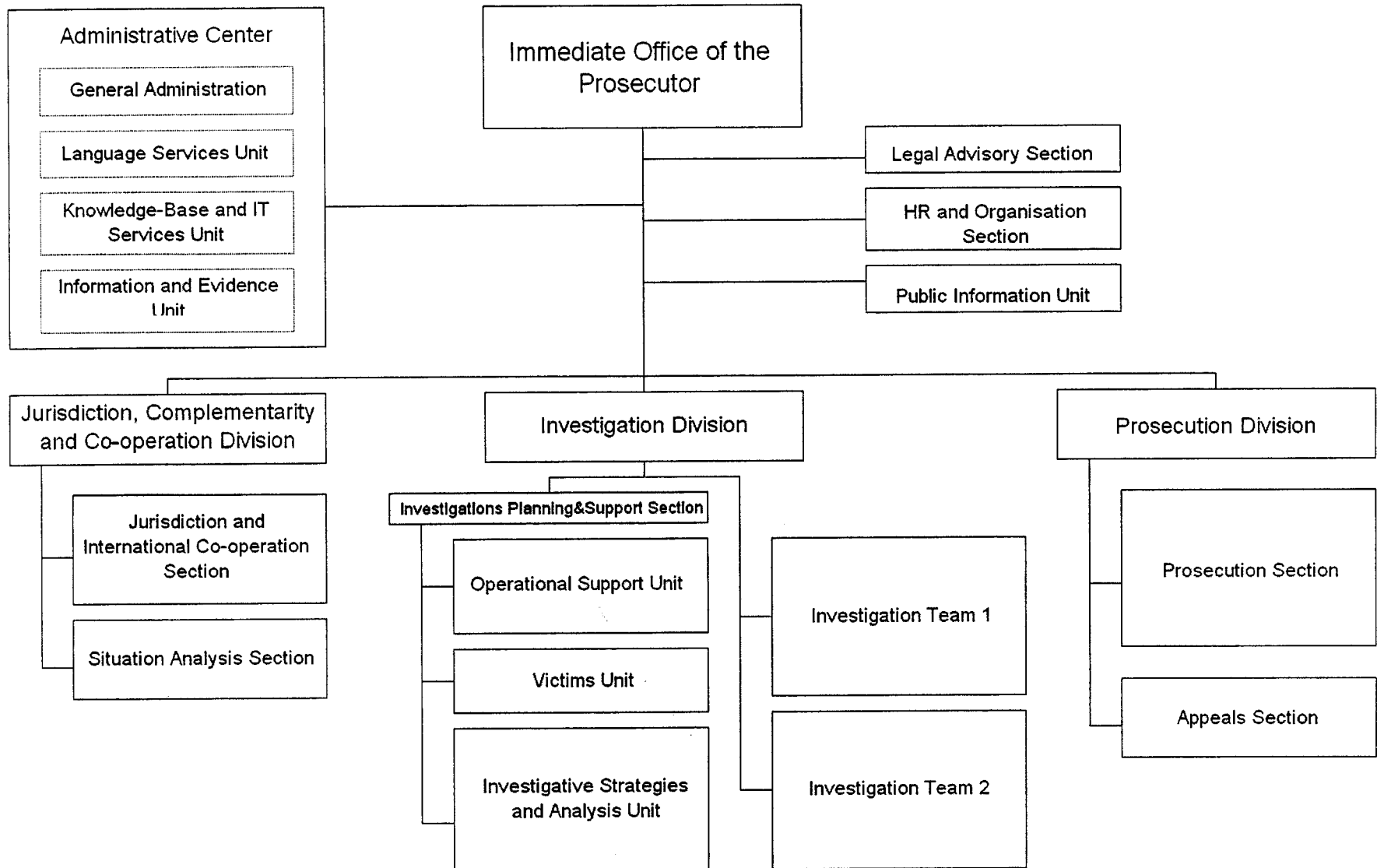
The situations faced by the Office, by definition, pose extreme challenges for investigation. In order to succeed, my Office will need the support of the international community, including States, multinational organizations and civil society.

We will need various forms of practical and logistical support and assistance from States and organizations. This might relate to gathering information, protecting witnesses, ensuring a secure environment for investigation, locating suspects and carrying out arrests.

Other actors are vital to ensuring the success of the Court. Specifically, we will build support from multilateral and regional institutions; work in close cooperation with NGOs; disseminate information about OTP activities through the media; and develop external networks with private lawyers, companies, academics and experts.

NGOs were vital in the creation of the Court, and they will continue to play a leading role in ensuring its successful functioning. In many situations, NGOs will be the only cooperative entities with on-the-ground expertise and capacity in a given conflict. The OTP will maintain strong working relationships with both local and international NGOs, and the foundations that support them. My Office strongly values regular feedback and ideas from NGOs. In turn we must ensure that NGOs and their funders are well informed about OTP activities and needs.

Organisation Chart 2004



OTP