

The 2004 Otto L. Walter Lecture
The First Steps of the International Criminal Court:
Creating a Credible Court of Last Resort
March 24, 2004

Addressing over 200 people in the Wellington Conference Center, the Chief Prosecutor of the International Criminal Court – Luis Moreno Ocampo – discussed the challenges facing that newly-established world body. The Center for International Law – whose director is Professor Sydney M. Cone, III – sponsored the Chief Prosecutor’s remarks during the 2004 Otto L. Walter Lecture which was named for a distinguished alumnus of the Law School.

Ratified by over 90 countries and coming into force in July 2002, the Rome Statute of the International Criminal Court created the world’s first permanent international crimes tribunal – the International Criminal Court (ICC) – to try individuals accused of genocide, crimes against humanity, or war crimes. The ICC has a much wider jurisdiction than previous tribunals which were formed on an ad hoc basis for specific conflicts such as those in Rwanda and the former Yugoslavia. It has jurisdiction over individuals from those countries (States Parties) that have ratified the Rome Statute for crimes committed anywhere, as well as individuals from any country for crimes committed in the territory of a State Party.

During the lecture, Mr. Moreno Ocampo discussed both the formal and informal constraints faced by the ICC. For example, because it may hear cases only in instances where States Parties are unable or unwilling to do so, the ICC is, in some ways, a “court of last resort,” said Mr. Ocampo. Furthermore, unlike his prosecutorial counterparts at the national level, his office must operate in collaboration with national and local investigative and police authorities, diplomats, NGOs, and other constituencies. The ICC recently announced that it would be taking on its very first case, which was referred to the world body by the president of Uganda where rebel leaders are alleged to have used children as soldiers and sex slaves.

Mr. Moreno Ocampo also said that he regarded the private sector as a “key player” in hypothetical ICC investigations and prosecutions. Because, in his view, the private sector offered “a unique mix of truly global perspective, creative dynamism, networking capabilities, and a long-term interest in stability and prosperity,” the Chief Prosecutor said that he looked forward to engaging that sector in a continuing dialogue.

Furthermore, Mr. Moreno Ocampo said that he will be drawing lessons from other international juridical organizations that have faced similar collaborative challenges, but in settings more traditionally associated with economic interests such as the General Agreement on Tariffs and Trade and the World Trade Organization (WTO). Professor Cone stated that both of these world bodies had built up “a substantial body of history and jurisprudence” from which the ICC may draw lessons in adjudicating its own cases. He noted that, in particular, the ICC may draw valuable lessons from the WTO which, he points out, “seems to have been successful in developing . . . the consensus that it needs in order successfully to handle difficult and seriously contested controversies in which substantial economic interests are at stake.”