

Recent developments at the ICC: Update from the Prosecutor on Communications Received by the OTP (regarding Iraq and Venezuela)

Please find below an informal summary of an "Update from the ICC Prosecutor on Communications Received by his Office". Annexed to this Update were two letters (also summarized below) stating that the Prosecutor has concluded not to initiate investigations on the Iraq and Venezuela situations respectively.

On 10 February 2006, the Prosecutor of the International Criminal Court made public an update on communications received by the Office of the Prosecutor (OTP) of the International Criminal Court. The update provided that the office has received 1732 communications from 103 countries including reports on alleged crimes in 139 countries in all regions of the world.

The update explains how the Prosecutor reacts to, and analyses, the communications received: initial review to determine possible basis for further action (80% of communications were dismissed at this stage, due to being found manifestly outside jurisdiction or ill-founded); further analysis involves a simple factual and legal analysis drawing on communications, referrals and public information (of 23 situations at this stage, 10 proceeded to intensive analysis, 6 were dismissed and 7 remain in this stage); thorough and intensive analysis (i.e. the phase the OTP refers to when publicly referring to "situations under analysis") may involve collection of detailed information, systematic crime analysis (gravity, complementarity and interest of justice) and planning for potential investigation (of 10 situations, 5 currently remain in this phase while 3 have reached investigation). Confidentiality is maintained in this entire first phase, with a few exceptions where the OTP has acknowledged the fact that the situation is under analysis.

The update explains that the OTP normally informs only senders about the decision not to initiate an investigation. Where intensive analysis has taken place, the Office may, in exceptional circumstances decide to make public its reasons where certain requirements regarding already existing publicity, as well as security and privacy of senders, are met; as demonstrated about the information on the two situations of Iraq and Venezuela. Further, the update provides some information about Cote D'Ivoire ("appears to involve over a thousand potential victims of willful killing within the jurisdiction of the Court" and the Central African Republic ("involves lower figures of willful killing but high levels of sexual violence").

The update also provides information about the three opened investigations (Northern Uganda, DRC and Darfur in the Sudan), into large-scale killings, sexual violence, abductions and displacement of people being performed by small teams with a sequential approach. It also provides information about the OTP's policy behind selection of cases, based on "greatest responsibility for the gravest crimes. The update states that the Prosecutor remains ready to use his proprio motu powers and that the Office will refine its regulations and policy paper on analysis and make it public.

See website of the ICC: http://www.icc-cpi.int/library/organs/otp/OTP_Update_on_Communications_10_February_2006.pdf

On 9 February 2006, two letters were produced (and made public) to senders of communications regarding the situations in Iraq and Venezuela respectively, informing them that the Prosecutor has concluded not to initiate an investigation in these respective situations (but that this can be reconsidered in light of new facts or evidence) and that he has not received any referrals from states in this regard.

The OTP had received 12 communications regarding (mostly alleged crimes by Venezuelan government and associated forces) Venezuela and 240 regarding Iraq (concerns regarding launching of military operations and the resulting human loss).

Both letters explain the duties of the Prosecutor to analyse information received, to determine whether to (seek authorization by the Pre-Trial Chamber to) proceed with an investigation and the criteria for this (reasonable basis to believe that a crime within jurisdiction of Court has been committed, admissibility before the Court in light of gravity and complementarity, and interest of justice).

The letters provide that the Prosecutor reviewed all communications, supplementary information and other materials. The OTP informs in the letter regarding the Iraq situation, that it sought and received information from, among other entities, relevant States, and also collected information about national proceedings.

Personal, territorial and temporal jurisdiction: Regarding Venezuela, the OTP concluded that, although most of the allegations could not be considered since the incidents did not fall under the temporal jurisdiction of the Court (before 1 July 2002) some alleged crimes committed after 1 July 2002 did fall under the jurisdiction since they were committed on the territory of a State Party (Venezuela). Regarding Iraq (not a State Party), only the communications regarding alleged crimes by nationals of a State Party could be considered. In response to communications regarding the legality of the conflict the Prosecutor concluded that the Court may not yet exercise jurisdiction of the Crime of Aggression and that the Prosecutor can only examine conduct during conflict, but not the actual legality of the conflict or use of force.

Conclusions regarding the alleged crimes: In the Venezuela situation, the Prosecutor responded to the relevant allegations concerning crimes against humanity. The Prosecutor stated that many of the allegations appeared to fall short of the elements of crimes of persecution (in the case of the Government) and that the test for widespread or systematic attack directed against any civilian population had not been satisfied (neither in the case of the government nor the opposition). Further, the Prosecutor referred to the difficulties arising from imprecise and inconsistent information received, but that the OTP also relied on other sources.

In the Iraq situation, the Prosecutor concluded that the available information provided no reasonable indicia of the required elements for genocide or crimes against humanity. Most of the allegations concerned allegations of war crimes during the military operations between March and May 2003.

Firstly, regarding war crimes through targeting of civilians or clearly excessive attacks, the OTP assessed whether attacks were intentionally directed against civilians; whether the injuries caused was clearly excessive in relation to military advantage (including the use of cluster munition); and the nature of the involvement of national of a State Party.

OTP concluded that although the considerable number of victims, the information did not indicate intentional attacks on civilians. Further, although additional information was sought and received (including by the UK government and independent sources) there was not sufficient information indicating clear excessiveness or involvement of nationals of States Parties.

Secondly, regarding willful killing or inhuman treatment of civilians, the OTP collected information about incidents and national proceedings of States Parties and concluded that there was reasonable basis to believe that crimes within the jurisdiction of the Court had been committed. However, when looking at gravity (in order to establish admissibility) it was

concluded that the situation did not meet the required threshold of the Statute as these crimes did not appear to be committed 'as part of a plan or policy or as part of a large-scale commission of such crimes'. It was also stated that the number of victims was limited in comparison with current situations under investigation. Since the requirements of gravity were not met according to the Prosecutor, the Office did not reach a conclusion on complementarity, although the letter informs that the OTP collected information on national proceedings and noted that proceedings on each of the incidents had been initiated.

See the website of the ICC (on Iraq): http://www.icc-cpi.int/library/organs/otp/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf

See the website of the ICC (on Venezuela): http://www.icc-cpi.int/library/organs/otp/OTP_letter_to_senders_re_Venezuela_9_February_2006.pdf

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*Communications to the ICC can be sent to:
ICC
P.O. Box 19519
2500 CM The Hague
The Netherlands*
