Former ICC chief prosecutor talks Israel, the Palestinians and ISIS

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Luis Moreno Ocampo says that at age 32, he knew he’d just been “appointed to the most important job I’d have in my life.”

Moreno Ocampo became a household name, and for many a beacon of light when, in 1985, he argued the case against the Argentine military leaders who had murderously ruled his country from 1976 to 1983.

But he is better known these days as the first Chief Prosecutor of the International Criminal Court, and as such, the man to whom both Israelis and Palestinians looked, with a mixture of fear and hope, for a possible legal framework for the ongoing regional conflict.

The ICC, he says, “is basically a Nuremberg tribunal, but permanent.”

This week, alongside several US lawmakers, the Palestinians requested that the United Nations initiate an official investigation into Israeli extrajudicial killings of Palestinians following the death of Abed Al-Fattah Al-Sharif in Hebron.

Al-Sharif, a Palestinian citizen, attempted to stab an Israeli soldier patrolling the West Bank town of Hebron. He was shot and wounded by the soldier, but a second soldier, who has now been charged with manslaughter, was subsequently filmed shooting Al-Sharif in the head once he lay incapacitated on the ground.

TML: Is Palestine a state in terms of the ICC?

LMO: Nothing in statute allows a prosecutor to define this issue, so I cannot define that. I suggested the Palestinians could go to the United Nations General Assembly, and then come back. They did that, and won by an incredible 138 to 7 vote. What happened to Israel? How could they lose this by 138 to 7? That is something Israel should think about. Something is complicated here. So the fact is they got the statehood, and for 1 year they did nothing. They were using it as a Sword of Damocles.

TML: In terms of Israel and Palestine, who should have the greatest concerns right how?

LMO: Palestine’s accession [to the court] should not be construed as aggression. It could have a positive aspect. Palestine is committed to non-violence, and to investigate and prosecute cases of violence, and that should be something Israel could value. OK, Palestine could help to control rockets. And Israel also has to understand that there are issues. If it attacks Gaza, the ICC could intervene. Or the settlements could be reviewed by the ICC. So, in some ways I think it’s better because it’s a legal discussion, not a war.

TML: You have said that Israel overreacted to the Palestinian declaration of statehood. Why so?

LMO: Of course. The fact is that Palestine, if now a state, is subject to the requirements and demands that all states take upon themselves, which could actually be an opportunity for Israel. It changes how Israel can respond to charges presented against it.

TML: If we are talking about Israeli and Palestinian leadership, their justifications, how would you see that right now in an international context?

LMO: I think the reactions of leaders in Israel and Palestine are connected to the idea that both communities are living in fear. It’s fear. And it’s complicated.

TML: A state that is attacked by a foreign-based non-state agent. Should that be seen as part of criminality or part of war?

LMO: You know, when did President Bush decide that terrorism was no more a law enforcement problem but an act of war: On September 11, 2001. They don’t see the connection between the invasion of Iraq and a young boy dying on a Greek beach. They don’t see the connection, but there are connections. Because basically, when they invaded Iraq, the Shia assumed power and they removed the Sunnis and not only that, they harassed them, they shot them, they imprisoned them, so Islamic State is the only Sunni leadership that appeared.

There is no consensus on Syria. Obama was trying to strike in Syria, proposing to strike because the Syrians killed 2000 people with chemical weapons, not to mention the 90,000 killed with normal weapons. And in fact, no one supports Obama. And Ambassador Samantha Power says, why should the ICC be bogged down with this? Why would Assad be afraid of the ICC?

So—they were against justice and they were proposing to strike.

You need the leaders united to confront crimes. When they are united they solve the problems in one day. The problem is, normally they are not united, and that is very bad for the world. And now the world is more and more divided. The world is more and more tribal today. It is funny. Technology is improving communication, but because we are now connected with different places, there are no institutions left there, so we are becoming tribal.

So if Islamic State kills people in France, France goes and bombs people in Iraq. Why is that?

And then, will they say that someone can bomb Paris, to kill a member of the army in France? Because legally, it would be the same.

Because we have no clear legal framework, the Western countries are just fueling this fight. And I believe the idea of going to war is hypocrisy. We are bombing Islamic State but we are not controlling who is buying Islamic State oil. We are not following the money. So what are we really doing here?

Basically the question is are they enemies or are they criminals? If they are enemies we bomb them, if they are criminals we do something different. And that is the real issue. That is the next challenge for us.

He may be stretching things slightly, but not by much. In 1985, at age 32, he was appointed to prosecute the Argentine generals and admirals who’d illegally taken power in 1976 and, by 1983, killed thousands of Argentines.

The trials were televised, their impact incalculable.

“There’s a huge gap between how people think law is practiced and how lawyers actually practice the law,” he says.

His own mother, who had, like many Argentinians, supported the coup d’état, had a change of heart when she saw her son on the screen outlining in extraordinary detail the crimes of the military junta. “My mother, she thought Gen. Videla is a nice man, you should not prosecute him,” he recalls. “The trial changed her mind. What is basic for lawyers—like the simple fact that the state cannot torture-- is not basic for all people.”