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Prosecutor of the International Criminal Court**

***Conference on “Justice in Post Armed Conflicts
and the ICC: Reduction of Impunity and a
Support to International Justice”***

Hosted by Professor Cherif Bassiouni and the League of Arab States

Remarks

Cairo, 15 January 2009

I thank Professor Cherif Bassiouni for his kind invitation and for his commitment. He is a founding father of the International Criminal Court and an enormous contribution of the Arab legal culture to international criminal law.

I also thank the Arab League for allowing me to – at least electronically – be part of such an important event. It is a very important moment to discuss and analyze with you the relations between justice and armed conflicts. Reality is knocking at the doors of international law.

Excellencies, dear colleagues,

I have the privilege and the responsibility to be the Prosecutor of the International Criminal Court. The first permanent and independent international criminal court, established to end impunity for the most serious crimes of concern to the international community.

My mandate has three different aspects:

- I have to select situations and cases to open the jurisdiction of the Court;
- I have to investigate those individuals responsible for the most serious crimes; and
- I have to prosecute the cases in the courtroom.

In order to select situations to investigate, my mandate is defined by the law:

1. Rationae materie jurisdiction:

The allegations have to amount to the most serious crimes: genocide, war crimes and crimes against humanity. Each of them is clearly defined in the Rome Statute. Discussions on the definition of the crime of aggression continue.

2. Territorial jurisdiction:

a. The crimes must have been committed in the territory of a State Party or by a national of a State Party; examples are the investigations we opened in the Democratic Republic of the Congo, Uganda or the Central African Republic, as well as the preliminary examination of crimes committed in Colombia, Afghanistan or Georgia. I have no power to open an investigation for crimes committed in a territory of a non State Party.

b. There is one exception: if this non State Party makes an *ad hoc* declaration accepting the jurisdiction of the Court, as Côte d'Ivoire did. In this case, it is the State concerned which decides that exceptionally I can intervene.

c. Finally, the United Nations Security Council can refer a situation to the Prosecutor acting under Chapter VII of the UN Charter. In this case the Council can refer a situation regarding any UN member States. Darfur is an example. The Sudan is a non ICC State Party but it is a member of the UN and therefore the Security Council has decided to refer the situation to my Office.

3. Temporal jurisdiction:

The crimes must have been committed since 1 July 2002, when the Rome Statute entered into force.

4. Complementarity:

The Court complements, and does not replace, national criminal justice systems. It prosecutes cases only if national justice systems do not carry out genuine proceedings. This fundamental principle is known as the principle of complementarity.

This is the law I have to apply. I will respect the law; I will not restrain myself for fear or favor. Respect for the law is my only strength. When we have jurisdiction, we investigate and prosecute applying the same standards to all. There are no friends in the Court. There are no enemies in the Court. There is one law, applying to all.

Excellencies, dear colleagues,

Let me now mention Darfur, a situation where all of us work for justice, work for the victims. My mandate is to contribute to the prevention of future crimes. The victims of the crimes are my main concern: they are more than two million people, they speak Arabic, they are Muslims, and they are Africans. 5,000 of them are dying each month.

On 31 March 2005, the UN Security Council referred the situation in Darfur to my Office by resolution 1593 (2005). I then entered into discussions with the Government of the Sudan for almost two years on the existence of national proceedings.

5 OTP missions to the Sudan took place between November 2005 and February 2007 to assess admissibility and complementarity issues and collect information on national proceedings. Let me be clear. There were no national proceedings then. And there are no national proceedings today related to massive crimes committed in Darfur. There is an official report from the Government of the Sudan in October 2008 that confirms this.

In accordance with its duties, the Office has conducted an independent and impartial investigation. Since the start of the investigation in June

2005, the Office has collected statements and evidence during more than 105 missions in 18 countries. We received information from the Government of the Sudan, the National Commission of Inquiry, the ministry of Defence.

On 27 April 2007, the Pre-Trial Chamber issued arrest warrants against Ahmad Harun and Ali Kushayb for 51 counts of crimes against humanity and war crimes.

Today, Judges of the International Criminal Court are considering the Prosecutor's Application for an arrest warrant against Mr. Al Bashir, the President of the Republic of the Sudan, for genocide, crimes against humanity and war crimes. They will decide in February. Should Judges rule in favour of the request, they will issue an arrest warrant and transmit it to the Government of the Sudan for enforcement.

Finally, my Office recently presented evidence to the ICC judges against rebel commanders for crimes committed against African Union peacekeepers in Darfur on 29 September 2007. A thousand of rebel-led soldiers surrounded and attacked the Haskanita camp in North Darfur; 12 African peacekeepers were murdered and 8 injured.

Excellencies, dear colleagues,

I know that many of you present here today, as well as many more around the Arab world and beyond, are concerned about what will be, what can be the role of international criminal justice in the Middle East. As I mentioned before, the Court's jurisdiction is limited to crimes committed on the territory of, or by a national of, a State Party. In Gaza at present, the ICC lacks such jurisdiction.

As I said, I will always respect the Statute. I can not replace the authorities with the power to provide the Court jurisdiction on a case. Others will have to decide whether or not this Court can be given the jurisdiction to look more closely into alleged crimes in the region.

My Office continues to update the Arab League, the African Union and institutions and leaders seeking for comprehensive solutions in Darfur on the Court's judicial developments. I know a lasting solution for Darfur crimes will require the leadership of the regional organizations.

Thank you. I hope that from this meeting will emerge new ideas on how we can work together to achieve peace and justice in the region.