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Keynote address

Peace and Justice, Friends or Foes?

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Ladies and Gentlemen,

Good afternoon. I am honoured to be here, and I am happy to discuss with you how justice efforts and peace efforts can be integrated, and how the activities of the International Criminal Court contribute to bringing about peace and security in conflict situations.

The decision to build a permanent, international criminal court was based on the lesson that a national State alone cannot protect its citizens. Europe saw how massive crimes crossed borders during the Nazi regime and the Balkans conflict; South America and Africa witnessed how massive crimes crossed borders during the cold war; Africa also saw the Rwanda Genocide, which resulted in the death of one million and flows of refugees to Tanzania and Congo. This exodus was at the root of the Congo wars, where four million people died, and where, even today, sexual violence reaches unspeakable levels. For these regions, it is a strategic priority to avoid a repetition of their experience.

As conflicts transcend borders and global crimes affect entire regions and continents, there is a need for a comprehensive and global strategy.

The Rome Statute offers a solution, as a new instrument of peace creating global governance without a global government but with international law and courts.

In Rome in 1998, representatives from civil society and from States with different legal traditions debated the creation of the Rome Statute from different perspectives, but all shared the same sense that the Conference was not just an exercise in putting ideas on paper. They knew that the new legal design would profoundly impact the way international relations are governed. Accountability and the rule of law would be the framework to protect individuals and nations from massive atrocities and to manage conflicts.

Under the Rome Statute, substantive law has been codified into one detailed text; States have reaffirmed their duty to prosecute the worst criminals; an independent, impartial and permanent International Criminal Court has been established; and authority has been vested in the Court to intervene if States fail to carry out their own responsibility to conduct genuine proceedings, while at the same time providing an incentive to States to assert their own responsibilities in the cause of international justice. The principle of complementarity encourages States to fulfil their legal obligations; it also ensures the international rule of law by creating an interdependent, mutually reinforcing international system of justice. The drafters of the Rome Statute also clearly recognized the intrinsic link between justice and peace. As reflected in the preamble of the Statute, by putting an end to impunity for the perpetrators of the most serious crimes, the Court can and will contribute to the prevention of such crimes, thus having a deterrent effect.

The legal framework, in particular the primary duty of every State to exercise its criminal jurisdiction over those responsible for international crimes, consolidates a new trend: no more impunity for alleged perpetrators of massive crimes; no more golden exiles for people like Idi Amin Dada, General Pinochet or Baby Doc Duvalier.

As UN Secretary-General Ban Ki-Moon said during the opening session of the ICC Review Conference in Kampala: *"Now, we have the ICC. Permanent, increasingly powerful, casting a long shadow. There is no going back. In this new age of accountability, those who commit the worst of human crimes will be held responsible. Whether they are rank-and-file foot soldiers or military commanders; whether they are lowly civil servants following orders, or top political leaders, they will be held accountable."*

By now, 111 States Parties are committed to prevent and punish massive crimes, and to use the rule of law to protect their own citizens.

Ladies and Gentleman,

Let me show you why all actors should seek to combine their efforts.

The Rome Statute provides the Office of the Prosecutor with precise criteria, through which we must determine whether there is a *reasonable basis* to initiate an investigation. We tick the boxes relating to jurisdiction, admissibility and the interest of justice. The latter should not be confused with the interest of peace, which is a consideration for political bodies, notably the UN Security Council, to make.

As Deputy Prosecutor of the Court, neither I nor the Prosecutor shall not be involved in political considerations. The Office of the Prosecutor has to respect scrupulously the legal limits. Our policy is never to stretch the interpretation of the norms adopted in Rome. This is the only way to build a judicial institution.

At the same time, political actors, armies, and conflict mediators have to adjust to the new legal framework, and implement judicial decisions in their activities.

The outstanding arrest warrants of the ICC, against President Al Bashir, against Ahmad Harun & Ali Kushayb, against Bosco Ntaganda, and against Joseph Kony and other leaders of the Lord's Resistance Army, show the importance of cooperation with the Court and the need for engagement of a broad array of actors.

While in general cooperation is forthcoming, with 85 per cent of the Office's requests for cooperation to States Parties and Non States Parties receiving positive answers, we encounter difficulties when it comes to arresting individuals when they are protected by active militias or when they use the state apparatus to commit massive crimes.

This is the main challenge; it requires collaborative efforts. The strength of the Rome Statute system lies exactly in the possibility for shared responsibility and complementary action between the Court and the international community.

There is a need for a consistent approach. Massive crimes require a careful plan. Certainty that these crimes will be investigated and prosecuted will modify the calculus of the criminals, will deter the crimes, and will protect the victims.

We can see from some of the situations before the Court that ignoring justice will not help peace efforts.

In Northern Uganda, the international community was for a long time keen to appease Joseph Kony both before and after the ICC warrant. Kony however was only interested in impunity and repeatedly took advantage of peace talks to re-group and re-arm his forces. He expanded his activities and intensified his campaign of rapes, abductions and killings. The impact of international justice was undermined because States and other stakeholders did not actually support accountability. Justice for mass atrocities demands universality, consistency and reliability.

The case against Ahmed Harun in Darfur also shows the need to integrate judicial and other efforts. For three years, the arrest warrant against Harun was ignored by mediators and political leaders as they pursued a three-track approach that included political negotiation, peacekeeping and humanitarian aid but not justice. They ignored the facts on the ground, especially Harun's role in hindering humanitarian assistance, or his role as a member of the UNAMID oversight committee, hindering the deployment of peacekeepers. In June 2007, one month after the issuance of the warrant, the UN Security Council visited Khartoum and failed to raise the issue with the Government. In 2008, Harun intervened in Abeyi on the border between North and South Sudan and 60.000 people were displaced. For three years, the Security Council failed to remind Sudan that

the referral, a decision under Chapter VII of the UN Charter, was binding on all UN Member States. It was not an oversight. It was a deliberate decision to sequence peace and justice, peace first, then justice. As a result, there was neither. Harun's current role as Governor of Kordofan could indicate the intention of President Al Bashir to continue using him as a future crimes coordinator.

As to President Al Bashir himself, it is worth recalling that in 2008, before the Prosecutor's application for an arrest warrant, there was no peace process. UN and AU envoys Jan Eliasson and Salim Salem had resigned. The ICC gave new life to the negotiations. The AU and Arab League increased efforts to achieve peace, creating a committee headed by Qatar. A new UN-AU mediator was appointed. The US took a leading role. President Al Bashir was cornered and needed to sound reasonable. His Government then engaged with the UN's Department of Peace-Keeping Operations more actively than at any time before and 65% of UNAMID was deployed in the following six months. His efforts to sound constructive led to renewed negotiations with the rebels and the AU-UN mediator Djibril Bassolé brought the parties to the negotiating table without ever challenging ICC's independent work.

Ladies and Gentlemen,

It is not justice that blocks the way to peace; it is the lack of enforcement of the Court's decisions which is the real threat to enduring peace. Allowed to remain at large, the criminals exposed are continuing to threaten the victims, those who took tremendous risks to tell their stories. Allowed to remain at large, the criminals ask immunity under one form or another as a condition to stopping the violence. We have to realize that there is now a new international justice system. In Rome, States made a conscious decision to create a justice system that could stop or prevent violence rather than an *ad hoc* creation acting *a posteriori*. New rules were created that other actors must adjust to.

Practice shows that this is already happening in some cases; the international community increasingly understands the role of the Court. The beneficial impact of the ICC, the value of the law to prevent recurring violence, is clear.

In Cote d'Ivoire, the prospect of prosecution of those using hate speeches is deemed to have kept the main actors under some level of control.

In Colombia, the prospect of the ICC attaining jurisdiction was mentioned by prosecutors, courts, legislators and members of the Executive Branch as a reason to make policy choices in implementing the Justice and Peace Law, thus ensuring that the main perpetrators of crimes would be prosecuted.

Even before a judgment is rendered in the case against Lubanga, the issue of child recruitment has triggered debates in far-flung countries such as Colombia, a State Party, and Sri Lanka and Nepal, two Non States Parties.

The international community should follow the example of political leaders excluding from their circle those individuals sought by the Court, thereby marginalizing them, giving them no options to travel. South Africa for instance, repeatedly states that it will not allow President Al Bashir on its territory without arresting him; they will not allow a situation whereby an individual tramples on people's rights and gets away with it. The Vice-President of Botswana recently stated that Botswana cannot associate herself with any decision which calls upon her to disregard her obligations to the ICC and that the perpetrators of war crimes should be tried at all costs. This is the kind of leadership that is needed - the kind of leadership that the victims need.

Conflict managers are also adjusting their toolbox, respecting the legal limits. UN Secretary-General Ban Ki-Moon issued in April 2009 the strongest guidelines ever, informing all mediators that the ICC course of action had to always be respected. It is an

opportunity for mediators, offering the possibility of more sophisticated strategies when carrying out negotiations. Former UN Secretary-General Kofi Annan, in his capacity as chair of the African Union Panel of Eminent African Personalities, stressed from the beginning the need to ensure justice in his work in Kenya. We see a similar commitment with former South African President Thabo Mbeki and his High-level Panel in Darfur, respecting the arrest warrants of the ICC as a given matter.

They need the support of the international community.

Ladies and Gentlemen,

Let me conclude.

UN Secretary-General Ban Ki-Moon at the opening session of the ICC Review Conference said:

“Perhaps the most contentious challenge you face is the balance between peace and justice. Yet frankly, I see it as a false choice. In today’s conflicts, civilians have become the chief victims. Women, children and the elderly are deliberately targeted. Armies or militias rape, maim, kill and devastate towns, villages, crops, cattle and water sources — all as a strategy of war. The more shocking the crime, the more effective it is as a weapon. Any victim would understandably yearn to stop such horrors, even at the cost of granting immunity to those who have wronged them. But this is a false peace. This is a truce at gunpoint, without dignity, justice or hope for a better future.”

International justice, national justice, search for the truth, peace negotiations can and must work together; they are not alternative ways to achieve a goal; they can be integrated into one comprehensive solution. The Court was created to investigate and prosecute the worst perpetrators, responsible for the worst crimes, those bearing the greatest responsibility, the organizer, the planners, the commanders; national

proceedings and other accountability mechanisms remain essential for the purpose of achieving comprehensive solutions; they are not alternative but complementary processes.

As the Secretary-General concluded: *"[O]ne thing is clear: the time has passed when we might speak of peace versus justice, or think of them as somehow opposed to each other. (...) We have no choice but to pursue them both, hand in hand."*

Thank you.