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*Combating Genocide and Other Massive Crimes – The International
Criminal Court's Contribution*

Commemoration of the 60 Years of the Genocide Convention

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Excellencies, Ladies and Gentlemen,

Thank you for the opportunity to be with you today. As Prosecutor of the International Criminal Court (ICC) with the power and the duty to investigate massive crimes, including Genocide, I welcome the opportunity to build upon lessons learnt by a diversity of actors and to work towards strengthening the network of individuals and organizations working to prevent and punish acts of genocide.

The 1948 Convention on Genocide is a founding text for the ICC; it is also a visionary text which already envisaged the creation of an international tribunal.

In 1998 in Rome, the adoption of the Statute of the ICC was the culmination of efforts of the international community to establish such a permanent Court.

In 2008 the Court is in operation. As Prosecutor, on 14 July, I requested to the Pre-Trial Chamber I the issuance of an arrest warrant against Sudanese President Al Bashir for genocide, crimes against humanity and war crimes.

Today, I will address three issues:

- The significance of the Genocide Convention as a founding text of the ICC;
- The role of the ICC, and;
- The Darfur challenge.

I – The Genocide Convention and the ICC

As you know, the definition contained in Article II of the Convention has been copied literally into the Rome Statute. But the contribution of the drafters to the ICC Statute is even greater.

The adoption of the Genocide Convention was the first expression of a worldwide consensus that crimes of this nature should no longer go unpunished; in addition, the drafters recognized that, for the law to be effective, an independent judicial enforcement mechanism would be required.

To that end, Article 6 refers to the authorities with jurisdiction over the crime: *“a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal”*.

The reference to an international penal tribunal was a revolutionary novelty in international law. That idea, and the lessons learnt from the political hesitations that allowed genocides such as the ones in Srebrenica and Rwanda to happen, laid the foundations for the ICC.

II - The Rome Statute as the foundation of a global criminal justice system

The goal of the Rome Statute is to end impunity for the most serious crimes of international concern and to contribute to the prevention of such crimes.

To achieve its goal, the Rome Statute integrates sovereign States and an international criminal court in one legal system. The Rome Statute incorporates

detailed definitions of genocide, crimes against humanity and war crimes in one text, defining the prosecution and prevention of these crimes as a national and international obligation.

In the words of the Preamble, the Rome Statute consolidates the *“duty of every state to exercise its criminal jurisdiction over those responsible for international crimes”* and establishes a system of international cooperation. The Rome Statute is more than a Court. National States remain primarily responsible for investigating and prosecuting crimes committed within their jurisdiction but in addition they have to support an independent and permanent International Criminal Court whenever and wherever the Court decides to intervene. States Parties have to *“guarantee lasting respect for and the enforcement of international justice”*.

The Rome Statute created a truly international criminal justice system based on two main principles: complementarity and cooperation.

It took more than a century to develop this model. In 1873, Louis Gabriel Gustave Moynier, the Swiss lawyer who co-founded the International Committee of the Red Cross, proposed a similar concept, recognizing the challenge of compliance. Moynier stated: *“a treaty was not a law imposed by a superior authority on its subordinates (but) only a contract whose signatories cannot decree penalties against themselves since there would be no one to implement them. The only reasonable guarantee should lie in the creation of international jurisdiction with the necessary power to compel obedience”*.

The Court as an independent and permanent mechanism provides a different dynamic, compared with other areas of international criminal law such as drugs trafficking, money laundering, arms dealing or terrorism. The mere existence of the Court produces incentives to take action at the national level. Additionally a ruling of the ICC will not only decide on the guilt or innocence of the accused, but it will reverberate with at least 108 States and citizens all around the world. The Judges’ decisions will contribute to establish the rule of law in the world. Even before our first trial, for example, in Sri Lanka and Colombia there have already been discussions about the use of child soldiers by local militias.

We need to further explore the possibilities and constraints of such a novel system, always bearing in mind that much of the activities could and should take place at the national level.

There have already been significant achievements in the implementation of the Rome “system” by different actors. National legislation has been approved in more than 50 countries. Diplomats and negotiators are increasingly excluding amnesties for the crimes covered by the Rome Statute. Armies around the world,

even from non signatory States, are adjusting their regulations to the Rome Statute. They are seeking to prevent their personnel from committing acts falling within the jurisdiction of the ICC. This is the way to stop crimes. The law makes the difference between a soldier or a terrorist, a policeman or a criminal.

All past genocides, in World War II in Europe, in Rwanda and the Former Yugoslavia, have been committed and have been carefully planned by organizers; now the planners know that we can go after them; although the effect of such a new approach cannot be assessed yet in terms of preventing genocides, there are already some signs of the impact of the ICC Statute.

In this context, I would note that the Security Council, in referring the Darfur situation to the ICC in March of 2005, has recognized that lasting peace and security in Darfur will require justice and accountability. In a few years, the UN system for peace and security was connected with the permanent system of justice. The Darfur case is a test for the international community and the coming months will be critical.

III - The Darfur case

Since June 2005, my Office has carried out an investigation under difficult circumstances. I have a duty to protect the persons called as witnesses and I cannot protect those living in the Sudan. Thus we had to investigate Darfur without visiting Darfur. We received information from many sources, including the Government of the Sudan, and were helped by thousands of documents collected by the UN commission of Inquiry. We contacted victims all over the world and interviewed more than 100 witnesses in 18 countries. And the victims, those who escaped from Darfur, in spite of all the pain, told us their stories. One woman described how they killed her baby and then raped her. A man told us: *"They forced me to watch as they raped my 8-year-old daughter. I was asking: 'why?'"*

Those stories are evidence. On this basis, in April 2007, Pre-Trial Chamber I of the ICC issued an arrest warrant against Ahmed Harun and Ali Kushayb for 51 counts of crimes against humanity and war crimes.

The evidence showed that the Sudanese Armed Forces, acting in concert with Militia/Janjaweed, attacked hundreds of villages predominantly inhabited by the Fur, Masalit and Zaghawa. Helicopters or aircraft dropped bombs. Ground forces killed, tortured and raped thousands of civilians. The attackers destroyed all means of survival, sources of water, and stripped the villages, destroying schools, mosques and hospitals.

As a result of the attacks, at least 35,000 people have been killed. The UN says that almost 300,000 of those who fled the attacks died of starvation and diseases. More than 200,000 people managed to reach refugee camps in Chad or Central African Republic. Almost 2.5 million people went to the outskirts of bigger cities that would become camps for Internally Displaced Persons (IDPs).

This first Darfur case confirmed one fact: the attacks against civilians in their homes, the massive campaign of rapes, the forced displacement of almost 3 millions people, were not the product of autonomous self-defence militias or the result of “inter tribal fighting”. They were the actual goal of an operation planned and implemented by the Sudanese state apparatus, executed by the Army, the Air Force and Reservist forces integrating tribal militias called “Janjaweed”.

The mobilization of local militia allowed Mr. Al Bashir for years to disguise the conflict as a tribal one that had nothing to do with state forces. Mr. Al Bashir created the illusion of Militia/Janjaweed autonomy, and this helped him to continue to carry out the genocide in the face of international scrutiny. The victims were attacked by those same officials who were supposed to protect them.

Ladies and Gentlemen,

On 14 July of this year, I presented to the Judges my second case in the Darfur situation covering crimes committed from March 2003 to the present. I requested an arrest warrant against Mr. Al Bashir for 3 counts of genocide, 5 counts of crimes against humanity and 2 counts of war crimes.

The evidence in this second case highlights three aspects, all of them known but all of them denied: Al Bashir ordered the crimes; it is genocide; and it is happening now.

Al Bashir ordered the crimes

He ordered the attacks on the villages and he orders today the attacks on the camps for internally displaced persons, the rapes and the hindering of humanitarian assistance. He publicly ordered to “*take no prisoners; I only want scorched earth*”. He ensured the implementation of his decision. He removed commanders and soldiers that refused to follow his illegal orders and appointed those who were ready to commit a genocide.

Al Bashir has genocidal intent

Al Bashir assessed that the Fur, Masalit and Zaghawa ethnic groups constituted a threat to his power. They challenged the economic and political marginalization of their region, and members of the groups engaged in armed rebellion. Al Bashir's goal was not simply to defeat a rebellion, but to destroy those ethnic groups whose members challenged his power. His motives were largely political. His pretext was a "counterinsurgency". His intent was genocide. This is not new. In 2004 already, Professor Alex de Waal wrote *"This is the routine cruelty of a security cabal, its humanity withered by years in power: it is genocide by force of habit."*

The Genocide is being committed now

The Fur, Masalit and Zaghawa are systematically attacked, first in their villages and now in the camps.

The mass displacement operations in Darfur were conducted in conditions which, during the deliberations preceding the adoption of the Genocide Convention, were found to constitute genocide: *"Mass displacements of populations from one region to another [...] do not constitute genocide [...] unless the operation were attended by such circumstances as to lead to the death of the whole or part of the displaced population. If for example, people were driven from their homes and forced to travel long distances in a country where they were exposed to starvation, thirst, hunger, cold and epidemics"*.

As indicated in January 2005 by the United Nations Commission of Inquiry, there would be no policy of genocide if *"the populations surviving attacks on villages ... live together in areas selected by the Government...where they are assisted"*. The evidence shows that the target groups, far from being assisted, are also attacked in the camps.

President Al Bashir is providing no meaningful assistance to those millions displaced and is hindering the humanitarian efforts of the international community. Fear, rape and hunger are the main weapons of the current phase of the genocide. One victim of rape explained: *"They kill our males and dilute our blood with rape. [They]...want to finish us as a people, end our history"*. Another victim in the desert overheard one attacker say: *"Don't waste the bullet, they've got nothing to eat and they will die from hunger"*.

Since September 2005, Mr. Al Bashir appointed Ahmed Harun as the Minister of State for Humanitarian Affairs, to continue attacking his victims. He is still a critical piece in the implementation of Al Bashir's plan. The Humanitarian Aid Commission (HAC), within his Ministry, works in close association with the intelligence and security apparatus; they block the delivery of aid, expel relief staff, deny visas and travel permits to aid workers. As a consequence, 2.5 million people

in the camps today are subjected to conditions of life calculated to bring about their physical destruction.

Ladies and Gentlemen,

The Court is doing its part. The Pre-Trial Chamber will decide. But States have to be prepared: the Judges will decide on the arrest warrant sooner and later and States should adjust to this simple fact sooner than later.

There is a need to better integrate the judicial, humanitarian and political efforts. For almost one year, the first arrest warrant, issued against Harun, was ignored by mediators and political leaders in their discussions on Darfur. They ignored the Court's decision, and they ignored the facts. They ignored Harun's role in the HAC - the main obstacle to humanitarian assistance; they ignored Harun's membership of the UNAMID oversight committee, affecting the deployment of peacekeepers. In August 2007, Harun was appointed head of a committee to investigate human rights abuses, thus providing certainty to the other members of the Government that crimes are condoned.

A new comprehensive strategy is needed to factor in the information contained in our Applications and the fact of the arrest warrants.

Arrest warrants have to be executed. They not only serve the interests of justice; they can help alleviate the humanitarian situation, facilitate the deployment and operation of UNAMID and reach lasting political agreements. It is about justice and it is about realpolitik. Massive crimes are not just a moral problem; massive crimes cross borders, destabilize entire regions and affect world security.

Ladies and Gentlemen,

Given the international attention on Darfur, imposing conditions calculated to bring about the physical destruction of the target groups, combined with a studied misinformation campaign, was, and is still the most efficient strategy to achieve complete destruction. By preventing the truth about the crimes; concealing the crimes under the guise of "inter tribal clashes", or the "actions of lawless autonomous militia"; threatening Sudanese citizens and humanitarian workers into silence, and blackmailing the international community with the threat of derailing the North-South peace agreement, Mr. Al Bashir made possible the continuation of the genocide.

The Darfur case represents a unique opportunity for the international community to come together, to establish a new framework to protect individuals. As the UN Secretary General, Mr. Ban Ki Moon said, peace and justice have to work hand in

hand. The Court is fulfilling its judicial mandate, the Court is unveiling the truth and is creating the possibility of collective action against the crimes, but it will not be enough. International justice relies on cooperation. States and multilateral institutions have to create the conditions to implement arrest warrants and to update and harmonize old conflict management strategies with the new reality.

Let me conclude.

We are celebrating 60 years of the genocide convention; we celebrated 10 years of the creation of the permanent international Criminal Court envisaged in the Convention, but in the coming months the destiny of 2.5 millions Darfuris will be decided. "Never again" should no more be a promise: it is time to transform it into a reality. Darfur is our test.

It is easier to talk about past genocides, to say "never again" about the Holocaust, or to talk about the failures in Srebrenica or Rwanda, but it is not easy to talk about today's problems. There are different interests at stake in Darfur. You could have an important role in explaining today the lessons of past genocides. As demonstrated in the past by the work of Raphael Lemkin, even one person without official functions can contribute meaningfully to ending the crimes.

Thank you.