



**\*CHECK AGAINST DELIVERY\***

## **Commemoration of the 10<sup>th</sup> Anniversary of the Rome Statute of the International Criminal Court**

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I want to frame my remarks with the observation that the completion of the treaty creating the International Criminal Court (ICC) was an extraordinary step in extending the reach of the law to those responsible for the mass slaughter of civilians and for the use of rape as a weapon of war. As a nongovernmental organization observer in Rome, I can say that it was clear to nearly all the participants that we had witnessed an historic moment. We sensed that we were at a high water mark of international commitment to limiting the impunity associated with genocide, crimes against humanity, and war crimes.

On this tenth anniversary, I will focus on an aspect of the court's mandate that has generated important debate and requiring resolution. Unlike the earlier tribunals, which for the most part focused on conflicts that had ended, the ICC is mandated to investigate crimes committed in ongoing armed conflicts. The court's "real time" mandate means that it investigates crimes as other important diplomatic objectives like peace negotiations or peacekeeping are at play. Some commentators along with voices in the diplomatic community have wrongly cast the ICC as an obstacle to achieving peace. This ill-conceived perception has diminished the robust diplomatic and political support that the ICC needs to succeed.

While, as I will discuss shortly, the ICC prosecutor's request earlier this week for a warrant for the arrest of Sudanese President al-Bashir on charges of genocide, crimes against humanity and war crimes has thrown this tendency into even sharper relief, it has been apparent for some time.

It was all too apparent, for example, when the Security Council traveled to Khartoum in June 2007 for meetings with the Sudanese leadership. Despite having referred the situation in Darfur to the court, the Council failed to include Khartoum's blatant obstruction of the ICC's arrest warrants in its own terms of reference. This subordination of justice was based on the hope of placating Sudanese opposition to the much needed deployment of UN peacekeeping forces in Darfur. The Sudanese leadership interpreted the silence and responded with emboldened resistance not just to the ICC warrants (Khartoum gave one of the accused more responsibilities and released the other from custody) but also to the rapid deployment of peacekeeping forces and the unfettered delivery of humanitarian assistance.

To its credit, on its mission to Sudan last month, the Council did raise Khartoum's repeated obstruction of justice as one of several pressing items, and on June 9<sup>th</sup> the Security Council adopted a presidential statement calling on Sudan to cooperate with the court.

The Security Council's tendency to jettison the International Criminal Court has not been limited to its dealings with governments. There has been a similar impulse towards Joseph Kony, leader of the Lord's Resistance Army (LRA), an insurgent group that has ravaged the people of northern Uganda for twenty years. In the context of an armed conflict where the Ugandan government's armed forces have committed serious crimes, the LRA's trademark practice has been kidnapping thousands of children and turning the boys into child soldiers and the girls into sex slaves. Prodded in part by arrest warrants issued by the ICC for him and his senior commanders, Kony began peace talks two years ago. He insisted that lifting the ICC warrants was a necessary condition to obtain his signature on a peace accord and had tried to make the court the scapegoat for any failure. In an effort to accommodate Kony's demand, to limit impunity, and to hasten a peace agreement, Ugandan lawyers worked hard to craft provisions for criminal trials before a special yet-to-be created national court. Had Kony signed the Final Peace Accord, it was widely expected that the Security Council was expected to succumb to LRA demands by suspending the court's warrants. Kony, of course, has not signed the agreement. In the interval of the Juba talks, the LRA used the time as a screen to re-enforce its ranks and to extend its reign of terror across three African countries to abduct more children.

As I mentioned earlier, the controversy over the peace-justice interface and the role of the ICC has intensified qualitatively with the ICC prosecutor's request for a warrant for the arrest of Sudanese President al-Bashir on charges of genocide, crimes against humanity and war crimes. Some are arguing that should a warrant be granted, it will interfere with prospects for peace and security in Sudan.

Let's examine this assumption carefully. I would argue that recent history in Sudan makes a strong case for the opposite conclusion: the persistent lack of accountability has in fact undermined the prospects for peace and stability.

Since taking power in a military coup in 1989, the leadership of the ruling party in Sudan has conducted brutal campaigns to combat rebel groups in several regions, forcibly displacing millions of Sudanese and killing up to 2 million people in southern Sudan alone, all with impunity.

The strategy of burning and looting villages and arming tribal militias to kill and steal from ethnic groups deemed supportive of rebels was initiated in the south, and for years, much of the international community stood by silently. Not one U.N. Security Council resolution condemned the attacks throughout the 1990s.

International negotiators, understandably anxious to secure peace, were silent on the issue of accountability for fear of its effect on the north-south peace talks; perpetrators of the most serious crimes were never held to account. When the Darfur insurgency began in 2003—during negotiations between the north and south—the Sudanese government returned to the familiar tactics, committing widespread attacks on civilians in Darfur. As one Darfuri refugee in eastern Chad told a colleague of mine last year, "There is no justice in Sudan. If there was, we would not be here."

Human Rights Watch recognizes that states parties manage a range of interests vis-à-vis Sudan. But silence, ambivalence, or muted support regarding the court's involvement there sends an untenable signal about justice for the victims.

In this context I want to say a few words on the informal discussions reportedly underway in the Council regarding the possible suspension of ICC action on the request for an arrest warrant for President al-Bashir.

First, as a matter of principle I believe that Article 16, a provision of the Rome Statute, reflects an unfortunate compromise that authorizes interference by a political body, the UN Security Council, in the work of a separate and distinct judicial body. Such interference would undercut the appearance and the reality of the court's independence from political manipulation. Consideration of invoking this provision must be extremely rare.

Second, looking at the particular facts, the peace talks for Darfur are stalled, if not dead, because of a lack of political will among the parties. This has nothing to do with the International Criminal Court and certainly not with the requested warrant against President al-Bashir. If the Security Council suspended the request for a warrant, it would be rewarding a government associated with the commission of human rights crimes on a massive scale, in the hope of getting that same government to do what it is obligated to do anyway under international law: protecting its own civilians, stopping and prosecuting grave international crimes, facilitating access by relief personnel and peacekeeping forces.

Finally, from the perspective of the Council's own credibility, there is a problem. The Security Council referred the situation in Darfur to an independent prosecutor whose mandate was to investigate, charge and try those responsible for the most serious crimes regardless of official position. It was this same Council that just five weeks ago, after hearing the prosecutor discuss the mobilization of the entire state apparatus of Sudan in the commission of the crimes he was investigating, unanimously called on the Government of Sudan to cooperate with the prosecutor. If the Council, for the sake of accommodating a government that has obstructed numerous Council resolutions, rewards it with impunity, it's the credibility of the Council and its members that will suffer.

These examples and the related tough questions are, of course, a subset of the larger peace-justice interface which requires careful, objective examination and the intellectual honesty to break with conventional wisdom. While there are undoubtedly many factors that influence the resolution of conflicts, and we do not assert that impunity is the sole relevant factor, Human Rights Watch's field research in numerous conflicts over the past twenty years shows that rather than being contradictory objectives, peace and justice are complementary. In fact, impunity often contributes to renewed cycles of violence; accountability, on the other hand, may yield positive benefits for long-term stability and for development of rule of law.

In marking this important anniversary, we need to do more than reflect on what was accomplished in Rome. The international community needs to grasp the mettle and to align its work in peace negotiations and peacekeeping with the commitment to justice codified there. The question that needs to be asked and answered is: how to better manage the short term tensions that can occur in pursuing peace negotiations or peacekeeping without denigrating justice. Pitting one against the other is far out of line with the values codified in Rome.

Thank you.