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The Darfur Case

Council for Foreign Relations Symposium

Keynote Address

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Ladies and Gentlemen,

I would like to thank the Jolie-Pitt Foundation for promoting this dialogue at the Council on Foreign Relations. Particular thanks go to Angelina Jolie and Brad Pitt for the consistent support that they have offered my Office since they visited the Court two years ago. In our first meeting Angelina Jolie told me that after visiting more than 25 refugee camps in different parts of the world she asked herself: Who is doing something to confront the root of the problems these refugees are facing? They are in a desperate situation. They cannot protect their own rights. This is particularly true for the displaced people in Darfur.

I am the Prosecutor of the International Criminal Court. In 1998 States decided to create a permanent and independent international criminal justice system. They did it based on ideals and self-interest. They knew that in the world of today, no country has enough power or legitimacy to protect its own citizens. As of today 108 states have ratified the Statute and many are about to do so. The Rome Treaty gave me a mandate: to end impunity and contribute to the prevention of future crimes. I have to investigate impartially and present evidence to the Judges. I have to apply one standard: the law.

In March 2005, acting under Chapter VII of the United Nations Charter, the Security Council referred the Darfur case to my Office. The Council decided that any comprehensive solution in Darfur requires Justice.

I see this meeting as an opportunity for the people of Darfur, as an opportunity to design and promote a comprehensive solution for them, with justice, effective armed protection, distribution of humanitarian assistance and genuine peace-making.

Today is the time to design and implement such policies.

Today, massive crimes are being committed in Darfur.

The camps in Darfur are a crime scene: thousands of women and young girls are being raped; 2.5 million people, a substantial part of three groups, the Fur, Masalit and Zaghawa, are subjected to conditions of life calculated to bring about their physical destruction. Despite promises and denials, over the last five years, they are victimized. People from Darfur are repre-

sented neither in the Sudan, nor in New York. They are targeted by the very officials who are responsible for protecting them. This is key to understanding the plight of the Darfuris.

Today, Judges of the International Criminal Court are considering the Prosecution 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. Should Judges rule in favor of the request, they will issue an arrest warrant and transmit it to the Government of the Sudan for enforcement. Arrest is the responsibility of the territorial state. The Court is not asking for international forces to intervene. But there will be need for innovative, strong and consistent diplomatic and political action by all actors to ensure compliance with the Court's decision.

Ladies and Gentlemen,

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?'"*.

We turned those stories into 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.

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 mobilisation 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. Our first Darfur case exposed the role of Ahmad Harun, then Minister of State for the Interior. Other names - Musa Hilal and other tribal leaders - were more notorious, but they were not the most responsible of crimes. All of them were under the command of military officers, the militias integrated as reservist forces within the State apparatus and coordinated by Harun, a Minister. As I said, 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.

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.

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, Profesor 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. Mr. 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 HAC, Humanitarian Aid Commission, 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 requested my Office to present additional information by 17 November. The decision on Al Bashir arrest warrant is in their hands. But States have to be prepared: the Judges will decide on the arrest warrant sooner or later and States should adjust to this simple fact sooner than later. We are not going away; the call for justice is not going away; the arrest warrant, if issued, will not go away. States and multilateral organizations have to plan for a post arrest warrant situation.

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 an entire region and affect world security.

Ladies and Gentlemen,

Let me conclude.

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 Al Bashir criminal intentions; concealing his crimes under the guise of a “counter-insurgency strategy”, “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, 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. You could have an important role in designing such new strategies, based on the facts, and the law.