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Keynote Address

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Ladies and Gentlemen,

Let me first thank Dean Koh and President Fanton for this opportunity. The timing is perfect.

For the past 5 years massive crimes have been committed in Darfur. For the past 5 years no amount of negotiation has allowed the violence to abate. As of today, 5000 people are dying each month in Darfur.

It is indeed a crucial moment to discuss how to use the law to stop and prevent crimes. It is not about what the suspects will do, it is about what the rest of the world will do. It is about “never again”.

In a few days, three Judges of the ICC will decide on the Prosecution’s request to issue an arrest warrant against Mr Al Bashir for genocide, crimes against humanity and war crimes. Should the Judges rule in favor of the request, they will issue an arrest warrant and transmit it to the Government of the Sudan for enforcement. Are the Sudanese willing to arrest the President, now or in a few months? If not, how will the UN Security Council authority be affected? Do the States parties to the Rome Statute have a particular duty? What will be the reaction of the NGO and academic community? What can students do?

Since 2004 the international community has been actively engaged in Darfur. Former UN Secretary General Kofi Annan visited the area. A massive humanitarian assistance program was established. This is the only reason why 2.5 million displaced people are surviving. In different resolutions the Council banned the use of aircraft with military purposes and demanded the disarmament of the militia/Janjaweed and the bringing of their leaders to justice. In January 2005, a UN Commission of Inquiry produced a report confirming that members of the government committed crimes against human-

ity and war crimes against the civilian population. In March 2005 the Security Council referred the Darfur case to the International Criminal Court. It was a landmark decision.

The global peace and security system was connected with the first permanent and independent International Criminal Court. It is a test.

I have the privilege and the responsibility to be the Prosecutor of the International Criminal Court. The Court's mandate is to end impunity and contribute to the prevention of future crimes. My Office has to select situations and cases in accordance with the Statute, investigate the most serious crimes and present evidence to the Judges. I have a duty to be impartial; I have to apply the law to massive crimes. I have to do it without fear or favor.

In the Darfur situation, the jurisdiction of the Court stems from the UN charter. The Sudan is not a State party to the Rome Statute, but the Security Council, acting under Chapter VII of the Charter can refer a case to the ICC.

Since June 2005, my Office has carried out an investigation. We collected evidence from different sources, including the Government of the Sudan. We have a duty to protect the persons called as witnesses and we cannot protect those living in the Sudan. Thus we identified victims in 18 countries and we interviewed them there. For the first time, an international tribunal had to collect the necessary evidence without visiting the crime scene.

The evidence shows that since July 2002, members of the Fur, Masalit and Zaghawa ethnic groups engaged in armed rebellion against the central government.

The evidence shows that since April 2003 and 2004 the Sudanese Armed Forces and Popular Defence Forces, called "Militia/Janjaweed", systematically conducted joint military operations directed against civilians in towns and villages inhabited mainly by these three ethnic groups.

The targets are not rebel forces, but civilians in villages where rebels are not present, and without any valid military objective. Helicopters or aircraft dropped bombs. Ground forces killed, tortured and raped thousands of women and girls. 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 disease. The vast majority of the Fur, Masalit and Zaghawa have been displaced. 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.

On 27 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.

Our first Darfur case exposed the role of Ahmad Harun, then Minister of State for the Interior of the Sudan. Harun coordinated the Security Committees established in each locality to manage the massive criminal operation. He recruited, financed and incited the "Militia Janjaweed" to violence. Famous tribal leaders, such as Musa Hilal, were integrated as reservist forces within the State apparatus and coordinated by Harun, a Minister. The victims were attacked by those same officials who were supposed to protect them.

On 14 July 2008, I presented to the Judges our second case in Darfur. The evidence in this second case highlights the continuous attacks against the Fur, Masalit and Zaghawa ethnic groups. They continue to be systematically attacked, in the few remaining villages but mainly in the camps.

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 the three groups are subjected to conditions of life calculated to bring about their physical destruction. The President of the Sudan, an increasingly prosperous country, is providing no meaningful assistance to those millions displaced and is hindering the humanitarian efforts of the international community. Women and girls are systematically raped in and around the camps. Mental health clinics, the last lifeline for traumatized women, are closed down by the authorities. This is a different way to commit genocide, they are not using gas chamber or machetes. Based on the evidence, and the law, the Prosecution alleges that fear, rape and hunger are the weapons to destroy Darfur communities. One victim escaping from the attack in her house, overheard one attacker say: *“Don’t waste bullets, they’ve got nothing to eat and they will die from hunger”*.

The Prosecution alleges that Mr Al Bashir as President of the Republic of the Sudan and Commander in Chief of the Armed Forces exercises both *de jure* and *de facto* authority on the massive military operation conducted for 5 years.

He provided directions to the operations against the civilians in Darfur, he controlled the implementation of the operation, he personally recruited “Militia/Janjaweed”, he provided impunity to those who perpetrated the crimes and he concealed the crimes, using the media and the Sudanese diplomatic machinery.

Ahmed Harun is still a critical piece in the planning and conduct of atrocities. In 2003, President Al Bashir appointed him as Minister of State for the Interior to coordinate the attacks in the villages. In 2005, as most of the Fur, Zaghawa and Masalit had fled

to the camps for displaced persons, Mr Al Bashir appointed Ahmed Harun as the Minister of State for Humanitarian Affairs, to continue attacking his victims. The HAC, Humanitarian Aid Commission, within the Ministry of Humanitarian affairs, 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.

Ladies and Gentlemen,

On 20 November 2008, I presented a third Darfur case against three rebel commanders who led 1,000 soldiers in an attack against an African Union peacekeeping base in Haskanita in September 2007. They killed 12 peacekeepers, injured at least 8, looted the equipment and destroyed the installations. It is a serious crime under the Statute.

The Judges will also rule shortly on this case. All the parties in the conflict have to respect the law.

For all those cases, my Office would not have jurisdiction if the Sudanese judiciary had conducted national proceedings. It is the principle of complementarity. Over the past years, my Office analyzed the existence of national proceeding related to the crimes committed in Darfur. The Government of the Sudan announced the creation a special court on 7 June 2005 to deal with the problem. Regularly, new announcements are made. However, in September 2008, an official Report of the Government of the Sudan transmitted to the UN Security Council settled the question: the report describes the only seven cases completed by the Darfur Special Court. Ordinary cases. The gravest case is a student shot by the police during a demonstration, without any connection with the systematic crimes committed in Darfur. In fact, only the military officers who refuse to be part of the crimes, the human rights defenders or persons suspected of providing information about crimes committed in Darfur to the ICC are

detained and prosecuted. One man was recently convicted to 17 years in prison. They believe he is an ICC spy.

In spite of the efforts by a number of international organizations to encourage national proceedings, there are no relevant Sudanese proceedings. This confirms that the crimes are ordered by those who control the state apparatus.

Ladies and Gentlemen,

This was an overview of our investigative and judicial activities. I remember when we received the referral in 2005, some people warned that the Office would be unable to conduct investigations, that the Court will be irrelevant.

Today the Court is fulfilling its mandate. If the judges issue an arrest warrant, it will be the end of impunity for Mr Al Bashir. It will take 2 years or 20 years, but Mr Al Bashir will face justice.

But to prevent future crimes, to avoid another 5.000 deaths next month, the time is now. The relevance of the Court work is largely in your hands.

It is not about what Mr Al Bashir will do. It is about what you will do.

Let me be frank: The crimes have continued in Darfur because the international community has diverse interests and was never able to unite to ensure compliance with UN Security Council resolutions. If the world is united, the atrocities and genocide will stop in a day. The decision of the Court, if confirming the existence of the crimes, should create a momentum to close ranks around one objective, stop the crimes. It will be a unique opportunity for the international community to come together, to establish a new framework to protect the Darfuris.

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 discussed a three track approach: political negotiation, peacekeepers deployment and humanitarian assistance. 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 that Harun was – and is to this day - a member 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 confirming the promises of impunity. In 2008, Harun intervened in Abeyi, a city on the border between North and South Sudan where militias forcefully displaced 60.000 people.

Ignoring the arrest warrants was not an oversight. It was a decision based on the idea to sequence peace and justice. Peace first then Justice. As a consequence there was neither peace nor justice. So let us not repeat history. There is a chance to avoid past mistakes.

As the UN Secretary General, Mr. Ban Ki Moon, said, peace and justice have to work hand in hand. Multilateral institutions have to create the conditions to implement the arrest warrants and to update and harmonize old conflict management strategies with the new reality. Persons indicted by the Court should be arrested. They cannot be partners at the negotiation table.

This is not about regime change, it is about the criminal responsibility of individuals. It is about stopping the crimes. The Court is not asking for international forces to intervene. No war, no invasions, but also no inaction, no denial. Something between bombing and nothing.

The Court sets limits. Red lines. But to be efficient, we need the whole of the international community to respect and uphold those red lines. You would not keep changing the lines on a tennis court. Don't do it for more serious issues. We must give certainty to the criminals but also the negotiators have to respect the same limit.

Today Mr Al Bashir is threatening the victims, African Union and UN personnel, should he be indicted. The Court and the States cannot be blackmailed. We need to make clear that such threats will not be rewarded with promises of impunity.

There is a need for innovative, strong and consistent diplomatic and political action by all actors to stop the crimes and ensure compliance with the Court's decision.

Regional organizations will be of critical importance to stop the crimes in Darfur. I do not agree with all the statements of Jean Ping, the AU Chairperson. But I agree with him that the AU has played and must continue to play a leading role. I regret that commentators too often present the AU position as opposing the Court and promoting impunity.

The AU pursued efforts to ensure that justice is done for Darfur. The Peace and Security Council communiqué of 21 July 2008 *"reiterates AU's unflinching commitment to combating impunity and promoting democracy, the rule of law ...throughout the entire continent, in conformity with its Constitutive Act, and, in this respect, condemns once again the gross violations of human rights in Darfur."* Last month twelve African countries proposed African candidates to be judges in the Court. The Arab League was one of the first organizations to send a mission to Darfur, in 2004, the report from which recognized the commission of massive crimes. It is consistently requesting judicial investigations in the Sudan. And in Gaza.

I see this meeting as an opportunity for the people of Darfur, as an opportunity to design and promote a comprehensive solution for them. It is an opportunity for diplomats and global leaders to apply new solutions to solve international conflicts, for professors to provide a new framework of analysis and for student and advocates to promote global collective action.

This University educates some of the best students from all over the world. They can make a difference. They can organize meetings here at Yale and on-line with fellow students from Africa, Asia and around the world to discuss new options. You can make a difference.

Student, academics and NGO can propose new strategies, present new options. There are a lot of alternatives between bombing and nothing; there is something more than sequencing the Court decisions with negotiations. We all know what sequencing means. Sequencing means that before a deal, it is too early to have justice. Sequencing means that after a deal, it is too late to have justice. Sequencing means no justice, and no justice means promoting the use of violence to get and keep power.

The UN, States, and regional organizations, in accordance with UNSCR 1593, must act to ensure the enforcement of arrest warrants by severing all non essential contact with individuals indicted by the Court; by denying such individuals any political and economic support including by way of adopting individual travel bans and the freezing of personal assets. In recent months, I have seen unfailing consistency within the UN, under the leadership of Secretary General Ban Ki Moon, for such an approach and I wish to thank him and his former and present colleagues, Jean-Marie Guehenno, Patricia O'Brien. They are leading us on a new, less travelled road. The state parties have specific obligations to fulfil, and I appreciate President Wenawesser efforts to galvanize states party efforts.

Because indeed this is not just about legal duties, it is about leadership. Dutch diplomats are consistently mentioning the need to arrest Harun in each bilateral or multi-lateral meeting. In the Security Council the UK insisted in the need to include a four track, about justice, in the discussion on Darfur, driving countries like China to adopt a similar approach. Leadership is what the Court need.

Let me conclude mentioning what happened on June 2008, in the UN Security Council, after my briefing. Costa Rica took the floor and proposed a Presidential Statement to support the activities of the Court and demand the execution of the arrest warrants. Some called it a naïve enterprise, others called it mission impossible. There was no consensus, no major power in the lead.

But the leadership of Costa Rica galvanized the support of the United States and of the 9 State Parties to the Rome Treaty. There was still no consensus. Normally this would have been the end of the story.

But Costa Rica insisted, firmly asserting that with 10 votes, they could request more than a Statement, they could request a UNSC resolution, and anybody who wanted to veto was welcome to do so. Nobody wanted to.

On 24 June 2008, a Presidential Statement by the 15 members of the Security Council was approved by consensus. Costa Rica, a country with no army, moved the entire Council. I would like to thank Mr. Bruno Stagno Ugarte, Minister of Foreign Affairs of Costa Rica, for his leadership. I am sure that in this room, there are many other ready to take the lead to stop the crimes committed in Darfur, to transform the promise of “Never again” into a reality. The destiny of the Darfuris is in your hands and the opportunity is now.

Thank you for your attention.