

The Rome Statute and the International Center for Transitional Justice.

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My Office is part of a new system dealing with a new and complex problem: *international* transitional justice *during ongoing conflicts*. 10 years ago, countries from all the continents approved the Rome Statute, moving from a world based on power and relations with allies or enemies to a world based on law. They drew a new limit in international relations: no impunity for massive crimes. They adopted a new tool, the law, to manage violence and international conflicts. The Rome Statute is part of the transitional justice during ongoing conflicts project because its aim is to confront centuries-old methods of behaviour – such as genocides and abuse of civilians, in particular women and children – and to reshape the norms of human conduct while violence is still ongoing. It is a long term solution that requires an adjustment of short term strategies. ICTJ could play a key role in designing new approaches and helping UN, regional organizations and national states to implement them.

ICTJ is a pioneering institution on transitional justice. Its two Presidents, Alex Bouraine and Juan Mendez have first hand experience on how to move from a terrorist state to a democratic regime. Juan Mendez in his recent speech at Wilton Park explained how ICTJ articulates the new challenge. He said that the ICC must be considered as instrument of justice, and only secondarily as instruments of peace or prevention.

I agree with him that Justice should not be the only option to manage violent conflicts and has to be “coordinated with effective armed protection of civilian population, with distribution of humanitarian assistance and with genuine comprehensive efforts at peace-making”. I will add development, in particular promotion of development by the private sector.

As Juan Mendez, I believe that we can, and we should reconcile two visions: the Rome treaty as global justice system and as a tool for conflict management. My mandate is to apply the law. The Rome Statute sets limits not just for criminals, but to all national and international actors. This new legal framework is showing concrete results: armies around the world are adjusting their regulations in accordance with the Rome Statute. But those involved in international conflict management also have to adjust and to

uphold the law; they have to achieve short term results without compromising respect for judicial decisions.

This is particularly true in the Darfur case. In Resolution 1593, the Security Council decided that justice and accountability are critical components to achieving lasting peace in Darfur. For the first time, peace and security were connected to international justice. This provides a unique opportunity to integrate both concepts.

In the case of Darfur, Ahmad Harun coordinated the Militia/Janjaweed attacks on civilians and is responsible for the forced displacement of millions of people into camps. Today he is controlling his victims, in his position as Minister of State for Humanitarian affairs. When the arrest warrant was first issued, Khartoum was discussing internally the possibility to remove Harun from the government; they were asking us questions about the consequences of surrender. In order to give any chance to the process, arresting Harun had to be the first condition in any negotiation with the Sudan, in order to disrupt criminal activities and allow for the creation of genuine conditions for peace.

But the issue of enforcing the arrest warrants was then put off the agenda of relevant UN and European-sponsored meetings. The international community preferred to deny the facts and the need to enforce the judges decision.

As the international community ignored the arrest warrants, the Sudanese government drew its own conclusions. They promoted Harun to new tasks: as the head of a national committee to investigate human rights abuses in the Sudan and as a member of a committee established to “facilitate” the deployment of the UNAMID peacekeeping mission.

It is the lack of enforcement of the Court’s decisions which is the real threat to enduring Peace. Execution of arrest warrants requires further efforts. Military operations are not the only solution. As Juan Méndez said states that are interested in justice should be ready “to exercise political and diplomatic muscle in obtaining cooperation from recalcitrant states”. States, UN and regional organizations must create the conditions for the execution of arrest warrants recognizing the gravity of the crimes; requesting the arrest of the persons indicted; reducing political and economic support. Individuals sought by the Court must be isolated, marginalized and weakened. The international community has to respect and enforce the Court decisions. This is the major challenge.

Again, let me quote Juan when he says that “ Accountability, protection, relief and peace have “to be pursued aggressively, in coordinated fashion and in good faith”. Justice cannot be treated as a bargaining chip, or as a tool to be turned on or off according to the vagaries of the peace process”. He uses the “Juba talks”, where humanitarian assistance was diverted and Kony gained legitimacy, as an example to avoid. I cannot agree more.

In June, I will report to the Security Council on my current investigations on Darfur. I need ICTJ bringing up with policy makers, negotiators and diplomats the need to better integrate justice decisions and findings into a comprehensive framework. We can discuss how to do it. I count on ICTJ support.