

## The New York Times

**SERVIAN, France** — The prosecutor of the International Criminal Court has made the tough decision to seek an arrest warrant for a leader of a country at war - Sudan's president, Omar Hassan al-Bashir. He is to be charged with genocide, crimes against humanity and war crimes during the last five years of war in Darfur.

One has to go back to the cases against Slobodan Milosevic of Yugoslavia in 1999 and Charles Taylor of Liberia in 2003 to find the last time that international prosecutors charged a sitting head of state. Then, as now, they were criticized for failing to take "politics" into account.

These criticisms are misdirected. The 1998 Rome treaty establishing the International Criminal Court removed head-of-state immunity for atrocity crimes. Since 2005, when the United Nations Security Council referred the Darfur situation to the court, the prosecutor, Luis Moreno-Ocampo, has simply been doing his job - which is to present charges against those who bear the greatest responsibility for the crimes.

Critics predict that an arrest warrant will harm efforts to deliver aid and to deploy the United Nations peacekeeping force in Darfur. But both of these efforts are already hobbled. Bashir's government has a long history of obstructing aid - notably during the famine in 1998, before the International Criminal Court even existed. And an obstructionist Sudanese government and the countries that are supposed to contribute troops to the peacekeeping force have long dragged their feet. It has taken five years to deploy just 9,000 soldiers. If Khartoum retaliates against the arrest warrant by attacking refugees, aid workers or peacekeepers, the responsibility will lie solely with the leaders who issue the orders.

Some critics also worry that the indictments may harm the Darfur peace process by removing a key negotiating point - an offer of amnesty to Bashir along with the possibility of quiet retirement in a third country. But sometimes ambiguity over accountability can help peace negotiations along, as it did in South Africa in 1991, when amnesty was also a bargaining chip. Arrest warrants from The Hague also assisted the Bosnian peace process by removing hard-liners from the negotiating table.

It is too early to tell what effects the indictment will have on peace efforts. So far, there has been no Darfur peace process to speak of. Part-time United Nations and African Union mediators recently resigned in frustration, calling for a new approach.

In the meantime, the indictments may delegitimize the government in the eyes of the Sudanese people, especially the elites in Khartoum. In 1999, after the International Criminal Tribunal for the Former Yugoslavia issued its arrest warrant for Milosevic, an opposition group called Otpor turned it into a political weapon with the slogan, "He is finished." Milosevic lost the elections in 2000. Although other factors contributed to his fall, including lost wars and corruption, the indictments

played their part by demonstrating his isolation.

In Sudan's 2009 elections, some citizens may rally behind their president. Others may not.

In the story of the emperor's new clothes, a little boy is the only one who has the innocence to point out that the emperor is naked. The arrest warrants for Bashir reveal to the world what type of regime holds power in Khartoum. They should also push the Security Council to apply real pressure on the Sudanese government. The council and its member states should make Bashir's government an international pariah, imposing sanctions against its leaders and, most important, Sudan's oil exports, which have so effectively insulated the regime.

The prosecutor's message might make some people uncomfortable, but that does not mean we should shoot the messenger. This crisis should galvanize the Security Council to take serious action.

*Richard Goldstone is the former chief prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda.*