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***Statement to the United Nations Security Council on the situation in
Darfur, the Sudan, pursuant to UNSCR 1593 (2005)***

New York, 5 June 2009

English Version

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Mr. President, Excellencies,

1. I thank you for inviting me to brief you today.
2. This Council, through Resolution 1593, referred the situation in Darfur since 1st July 2002 to the Prosecutor of the International Criminal Court in March 2005.
3. For two months my Office assessed the allegations of massive crimes committed in Darfur and the existence of national proceedings in relation to them. Since there were no such proceedings, as the Prosecutor I decided to open an investigation in June 2005.
4. Based on the Statute, the policy of the Office is to investigate and prosecute, in accordance with the evidence collected, those most responsible for the gravest crimes under our jurisdiction. This is what we did in the Darfur situation.
5. We collected evidence impartially for two years, relying on information provided by many actors, including the Government of the Sudan and on testimonies of more than 130 witnesses. We took these testimonies in more than 18 countries and devoted a lot of efforts to ensuring the protection of those witnesses.
6. In our first case, we investigated the massive killings, rapes and torture against civilians in their villages during the period 2003-2005, forcing the displacement of 4 million civilians. The evidence showed the role of the Minister of State for the Interior, Ahmed Harun, as the coordinator of massive crimes against civilians not participating in the conflict, and the role of Militia/*Janjaweed* leader Ali Kushayb in specific attacks.
7. In our second case, we covered the same massive crimes against villagers and the continuing crimes committed against the displaced persons in the camps. The evidence showed the role of President Omar Al Bashir, from the beginning in 2003 when he ordered the operations against the civilians in the villages, through 2005, when he appointed Ahmed Harun as the Minister of State for

Humanitarian Affairs, and organized the process of strangulation of the displaced communities, denying them any meaningful assistance, preventing the returns, forcing the UN and others to set up the largest humanitarian operation in the world, and yet obstructing each step of their work.

8. On 4 March 2009, Pre-Trial Chamber I issued an arrest warrant for 5 counts of crimes against humanity including extermination, rapes and killings, and 2 counts of war crimes against President Omar Al Bashir. By a two to one vote, the Judges rejected the three genocide charges at this stage. The Office has appealed, and the Pre-Trial Chamber has yet to decide to grant leave to appeal.

Mr President, Excellencies,

9. The Judges' decision of 4 March has clarified the type of crimes committed in Darfur against the displaced persons in the camps. While the peacekeepers monitor fighting between parties to the conflict, while the humanitarian workers monitor the physical plight of the civilians, the International Criminal Court monitors individual behaviour that can constitute crimes within our jurisdiction.
10. The intentional infliction of conditions of life in the camps, where the Sudanese state apparatus controlled by President Al Bashir does not provide assistance and is obstructing the provision of assistance, and the multiple rapes of women leading to physical or mental traumas, are both crimes within the jurisdiction of the Court.
11. The Judges have retained the charge of extermination as a crime against humanity. Under Art 7 (2) (b) of the Statute, extermination includes, and I quote, the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.
12. This provision mirrors those of Article 6 of the Statute on genocide which establishes that "*Causing serious bodily or mental harm to members of the group*" and "*Deliberately inflicting on the group conditions of life calculated to*

bring about its physical destruction in whole or in part” can constitute genocide. The only difference between extermination and genocide is the latter’s requirement to demonstrate an intention to eliminate a specific group, in this case the Fur, Massalit and Zaghawa.

13. We also investigated and prosecuted attacks against peacekeepers. The attack on Haskanita in September 2007, which caused the death of 12 African Union peacekeepers and left thousands of people without protection, was the most serious of all attacks against peacekeepers in the region.
14. On 7 May 2009, Pre-Trial Chamber I issued a first summons to appear in relation to the Haskanita crimes for Bahr Idriss Abu Garda, President of the United Resistance Front. He appeared in Court in The Hague on 18 May 2009. Let me thank those countries which have facilitated investigative missions of my Office, helped protect victims and witnesses, and helped facilitate the initial appearance of the first individual to have agreed to appear voluntarily before the Court, among them The Gambia, Mali, The Netherlands, Nigeria and Senegal.

Mr President, Excellencies,

15. Those are the cases currently prosecuted by the Court. The ICC has investigated the crimes committed over the last 6 years. We identified the most responsible of the most serious crimes committed in Darfur. This is our judicial mandate. Our contribution to stopping the crimes and preventing future crimes.
16. We identified six individuals to be prosecuted. Three arrest warrants have been issued; one summons has been issued; the Judges’ decision on two remaining individuals in the Haskanita case is pending. There is no sealed decision or other case pending at this stage.
17. As I mentioned in previous briefings, the list of 51 names prepared by the UN Commission of Enquiry is not used by my Office.

Mr President, Excellencies,

18. As I did in the past, I would like to inform the UN Security Council of the next activities of my Office. I will be precise in order to facilitate the planning of other actors involved.
19. The judicial process is going ahead. The hearing for the confirmation of the charges in the Haskanita case against Bahr Idriss Abu Garda is scheduled for 12 October in The Hague. It will require the appearance of very few witnesses. The rebel groups have to facilitate the appearance of the other two commanders. They have committed to do so. They must now act.
20. The arrest warrant concerning President Al Bashir has been sent to the Sudanese authorities. The Government of the Sudan has the responsibility to arrest him. Their legal obligation stems from the UN Charter and UNSC resolution 1593.
21. International experiences as the case of Slobodan Milosevic and Charles Taylor, or national experiences tell us that the implementation of a judicial decision against a Head of State is a process that can take time, months or years. In the end however, they all faced justice.
22. The Government of the Sudan has also the duty to arrest Ahmed Harun and Ali Kushayb. The designation of Ahmed Harun as Governor of South Kordofan contravenes the resolutions of this Council. He has to be arrested and sent to The Hague.
23. Arresting the persons sought by the Court is a process. It is first and foremost the responsibility of the Government of the Sudan. This Council by Resolution 1593 established the duty of the Government of Sudan to cooperate with the Court. Three year later, in June 2008, this Council confirmed its decision in Presidential Statement 21. In July 2008, a few days after my Office submitted to the Judges an application for an arrest warrant against President Omar Al Bashir, the Council also adopted Resolution 1828 which emphasized again “*the need to bring to justice the perpetrators of such crimes*” and urged the

Government of Sudan to comply with its obligations in this respect. Those resolutions as well as the presidential statement establish a clear framework.

24. States Parties to the Rome Statute have the responsibility to arrest and surrender any indictee travelling to their territory; there is no immunity under the Rome Statute. States Parties have taken a number of initiatives in this regard; some have publicly reasserted their obligations should indictees elect to travel on their territory.
25. States not Party to the Statute have no such legal obligation, but Resolution 1593 urges them to cooperate fully with the Court. They can help the process of justice and deterrence of new crimes by consistently raising with the Sudanese authorities their duty to respect UN Security Council resolutions and the ensuing Court's decisions.
26. Regarding complementarity, I can confirm that as of now, there are no national proceedings in the Sudan in relation to the massive crimes investigated by the Court. The most recent report of the Government of the Sudan circulated to the African Union and the United Nations on 2 February of this year indicated no new developments in this regard. Over the last 6 years, the Sudan has only tried and completed seven cases, from the dockets of the ordinary courts, and with no connection with the campaign of crimes coordinated by Ahmad Harun, perpetrated by Ali Kushayb and other, and ordered by President Al Bashir.

Mr President, Excellencies,

27. In the coming 6 months, in accordance with its mandate, my Office will continue monitoring crimes and galvanizing efforts to arrest fugitives.
28. I do not plan to open a new investigation during those next 6 months but I will continue reviewing new information of ongoing crimes. The focus will be *inter alia* on:

- a. any new decision affecting the persons displaced; in particular the role played by the Humanitarian Aid Commission;
 - b. the spill over of violence from Darfur into Chad, as well as information related to acts against civilians promoted by the Ministry of Defence of the Sudan and others ; and
 - c. the use of child soldiers by different parties including some rebel movements. I have prosecuted the crime of recruitment of child soldiers in the Lubanga case in the DRC situation. It is a crime with a terrible impact on victims, their communities, their futures.
29. Finally, it is a main objective of my Office in the months to come to build upon its cooperation with regional organizations as provided for in Resolution 1593.
30. I visited Doha last week upon the invitation of Prime Minister Al Thani. He is leading Arab League and African Union efforts to mediate the conflict. I have seen the commitment of the Qatari authorities to ending the violence and promoting peace and the efforts invested by the international community to avoid further violence. The work of the AU-UN mediation for Darfur is crucial to ensure a comprehensive solution and security for the Darfuris now. A year ago, nobody could have dreamed that the peace process would progress so. One year ago, there was no peace process. Last week, I saw real hope and commitment. My role is of a purely judicial nature but I fully appreciate the importance of the wider political and security process taking place in Doha in order to stop the violence and prevent future crimes.
31. I am also liaising with the AU High-Level Panel led by former President Thabo Mbeki, which has been mandated by the AU “*to address in a mutually reinforcing manner the inter-linked issues of combating impunity and promoting peace [and] reconciliation...*” As President Mbeki stated at the Panel’s inauguration in Addis on 18 March 2009, “*The African Union has taken the clear and unequivocal decision that the continent must act not only to end war and violent conflict in Africa, but also to ensure that where war does anyway break out, all belligerents must know that war crimes, crimes against humanity*

and other abuses will be punished resolutely, and that a culture of impunity will not be permitted to take root and entrench itself.”

32. I have had the opportunity to consult with President Mbeki on several occasions and we are planning to meet with him and the AU high level Panel on Darfur.
33. I also had a fruitful phone conversation with Chairperson Jean Ping of the African Union this week, on the 3rd of June, and we are planning to meet in Addis Ababa.
34. The Arab League has been pushing, successfully, for the adoption of a criminal code that includes Rome Statute crimes. If fulfilled, the other promises—including the investigation and prosecution of individuals responsible for crimes, no matter what their level or rank—made by the Government of the Sudan to Secretary-General Amr Musa last July could help turn the tide in the situation of impunity in Darfur.
35. Our efforts complement each other. The role of regional organization in promoting accountability and reconciliation at all levels for the Darfuris and in preventing future crimes is unique. In accordance with the Rome Statute, the ICC is a Court of last resort, complementary to the national judiciary. We have six cases. Should Regional organizations succeed in promoting national accountability mechanisms for the victims of other crimes, and stop new abuses, we would not need to further intervene.

Mr President, Excellencies,

36. Let me conclude. Resolution 1593 was one among different decisions taken by the Council to face the violence in Darfur. Other resolutions of the Council address the need of the Darfuris for a comprehensive political settlement, for the protection afforded to them by peacekeepers, and for the distribution of aid. All such aspects are key to ending the violence and the crimes in Darfur.

37. The International Criminal Court is fulfilling its judicial mandate to factually and legally describe the crimes committed, and to prosecute its cases, respecting the law, the victims and the persons accused. The Judges have issued decisions on those most responsible of the most serious crimes in Darfur. There will be no impunity in Darfur. Justice proceedings are in motion.
38. We are at a crossroads. The next 6 months will be crucial. Most of the millions of victims of crimes have lived in the camps for 4 years. Youths are unable to move around. There is no education, there are no jobs. If girls and women go outside, they are raped. If boys go outside, they are killed or, in some locations, abducted to fight. There is a generation of child soldiers in the making. There is a generation of victims faced with two options: they can leave the camps and die the same day; they can remain in the camps and die the day after.
39. Violence will bring no victory. For the sake of the Darfur civilians, all the parties to the conflict have to stop resorting to violence. This is the absolute priority. Thank you.