



Mr. Luis Moreno Ocampo  
**Prosecutor of the International Criminal Court**

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

New York  
9 December 2010

Mrs. President, Excellencies:

1. I thank the Security Council for this opportunity to present the 12<sup>th</sup> briefing on the work of the International Criminal Court in the situation of Darfur.
2. I would like to update you on Pre-Trial Chamber I's decision to issue a second arrest warrant for President Al Bashir for three charges of genocide, including genocide by killing in accordance with Article 6(a), genocide by causing serious bodily or mental harm through rapes and fear against people in the villages and in the camps for displaced persons in accordance with Article 6(b), and genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction in accordance with Article 6(c).
3. I would like to brief you about the hearing concluded yesterday at the seat of the Court in The Hague to confirm the charges against the rebel commanders who led the attack against African Union peacekeepers at their base in Haskanita. It is the most serious attack against peacekeepers in Darfur. For the Office of the Prosecutor, crimes against peacekeepers are some of the most serious crimes under its jurisdiction; they affect the lives of millions of civilians under peacekeeper protection.
4. I would also like to confirm that the Government of the Sudan is not cooperating with the Court and is conducting no national proceedings against those responsible for the crimes committed. Since 2005, Sudanese authorities have consistently promised to do justice, creating mechanisms such as Special Courts and Prosecutors, while consistently and deliberately protecting those who commit the crimes. President Al Bashir, in accordance with the Chamber's findings, issued the criminal orders to attack civilians and destroy their communities. President Al Bashir does not want to investigate those who are following his orders.
5. In terms of cooperation on arrests, the Rome Statute States Parties are firmly insisting on the need to respect the Court's decisions. The presence of many representatives of States Parties in this room underscores their consistent support for the end of impunity for these crimes.

Mrs. President, Excellencies:

6. The situation in Darfur is not just a humanitarian crisis, it is a systematic attack against the civilian population. There is an ongoing genocide. As mentioned in my written report, hundreds of civilians were killed just during the last 6 months, thousands were forcibly displaced, and more than 2.5 million people are suffering a subtle form of genocide: genocide by rape and fear. Rape and fear are silent weapons, below the radar of the peacekeepers, and unstoppable for the humanitarian organizations. And this continues. The UN Secretary-General reported on 14 July that Sexual and Gender-Based Violence continues and is *"generally perpetrated by men in military uniform."*
7. I appreciate the commitment to stop crimes against women and children as expressed by the Security Council in its meeting on 26 October 2010, commemorating Resolution 1325. Through its Presidential Statement 22, the Security Council noted with grave concern that women and girls are disproportionately affected by conflicts and that women's participation in peace processes remains too low. Resolution 1325 should be implemented in Darfur.

Mrs. President, Excellencies:

8. In relation to the Haskanita attack, yesterday's confirmation hearing at the seat of the Court in The Hague was unique. The rebel commanders have accepted that there is sufficient evidence to confirm the charges and go to trial. In any case, the Chamber has to make a decision by 17 February 2011.
9. The Haskanita case before the Judges is about how these two commanders led more than 1000 troops in carrying out a violent attack on the AMIS base in Haskanita, killing 12 peacekeepers and injuring 8 others. They also destroyed the camp and looted vehicles, fuel, and moneys. This attack has resulted in war crimes charges against them for violence to life and attempted violence to life for the murder and attempted murder of AMIS personnel under Article 8(2)(c)(i); intentionally directing attacks against personnel, installations, materials, units and vehicles involved in a peacekeeping mission under Article 8(2)(e)(iii); and pillaging under Article 8(2)(e)(v).
10. My Office expects the charges against the rebel commanders to be confirmed and for the trial to begin in 2011. In my personal view, during the trial they will

challenge the neutrality of the African Union peacekeepers, and will argue, therefore, that the Haskanita base constituted a legitimate military target. The Office of the Prosecutor will maintain that the African Union peacekeepers were neutral and that the attack was illegal, constituting war crimes. It is important to highlight that the commanders are appearing voluntarily before the Court and are willing to face the risk of going to prison. They are claiming that President Bashir also has to appear before the judges and respect the decisions of the ICC.

Mrs. President, Excellencies:

11. In relation to national proceedings, I would note the report of the AU High-Level Panel on Darfur, which cited among the *“current major obstacles to justice and reconciliation in Darfur”*, the *“absence of political will; denial of what happened and is happening in Darfur, as well as obscuring of the truth; war, fear and insecurity; poor policing and enforcement of law and order; impunity for the crimes committed in Darfur; unwillingness to use the law to attend to violations of human rights; failure to reform the judiciary; and the lack of a sufficient number of qualified personnel in the judiciary.”*
12. Confirming that, the most recent cover up statement, promising to do justice for Darfuris came on 27 September 2010, when Special Prosecutor for Darfur Nimr Mohamed visited North Darfur and announced his intention to begin investigations into the 2 September attack on Tabra, which resulted in a reported 37 or more people killed and 50 or more people injured.
13. However, two weeks later, in mid-October, Prosecutor Nimr was released from his position and replaced by Abdel Daim Zamrawi, Under-Secretary of the Ministry of Justice. Since then, no progress has been reported on the Tabra investigation or any other. Until the orders to Government of Sudan forces to commit crimes in Darfur cease, there is no possibility of justice for Darfur.

Mrs. President, Excellencies:

14. Let me conclude.
15. The Security Council referred the Darfur situation to the International Criminal Court in 2005, issued a presidential statement in 2008 urging the GoS to cooperate with the Court, and recently issued Presidential Statement 24, in which *“The*

*Security Council recalls the importance it attaches to an end to impunity, and to justice for crimes committed in Darfur”.*

16. My duty was to investigate impartially the worst crimes committed in Darfur and present cases against those most responsible. We presented our evidence to the Judges. The Court issued arrest warrants against a Militia/*Janjaweed* leader that reported to the then Minister of State for the Interior, that reported to President Al Bashir. The charges for President Al Bashir include crimes against humanity, war crimes and genocide. The arrest warrants will not go away. The legal work is done but the crimes are ongoing. President Al Bashir and his supporters are doing enormous efforts to cover up the crimes and divert the attention of the international community, by announcing new strategies and new justice efforts.
17. The Court also investigated the worst crimes committed by the rebel forces against peacekeepers. As I said, a trial is coming.
18. The Court fulfilled its judicial mandate. The whereabouts of the three fugitives are known. Ahmad Harun can be found in his Governor’s residence in Southern Kordofan.
19. States Parties are fulfilling their legal obligations and additionally, they are adopting policies to sever any contact with the individuals sought by the Court. President Al Bashir was excluded from the last European Union-Africa summit. States Parties are ensuring respect for the legal limits.
20. Regional organizations, such as the Arab League and the African Union, are crucial to doing justice, stopping the crimes, alleviating the humanitarian situation and providing stability to the Sudan. A proper dialogue with them is crucial to achieving these goals.
21. The implementation of the Court’s decisions—of the arrest warrants—is the responsibility of the Government of the Sudan and, ultimately, in the hands of the Security Council.
22. Thank you very much.