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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

11 June 2010

*Check Against Delivery*

Mr. President, Excellencies,

1. I thank the Security Council for this opportunity to report on the activities undertaken by the Office of the Prosecutor of the International Criminal Court since the last briefing.
2. I will provide a summary of the cases investigated since the Security Council referred the situation to the International Criminal Court.
3. My mandate is to end impunity of the most serious crimes to contribute to the prevention of future crimes. In the Darfur situation we conducted three investigations.
4. In our first case, we investigated a consistent pattern of attacks against the civilian population during the period from 2003 to 2005. Sudanese armed forces would bomb villages in Darfur, surround them and then ground troops would move in to kill, rape and pillage civilians in their homes. These attacks forced the displacement of 4 million civilians to a hostile environment. The evidence showed the role of the then Minister of State for the Interior, Ahmad Harun, as the coordinator of the Government of the Sudan forces, including recruiting and financing the Militia/*Janjaweed*, including the Popular Defence Forces, and of Militia/*Janjaweed* leader Ali Kushayb. On 27 April 2007, Pre-Trial Chamber I issued warrants of arrest against both individuals for war crimes and crimes against humanity. This is the case that you refer to in your note, Mr. President, on which the Judges made their decision about lack of cooperation by the Republic of the Sudan.
5. In our second case, we investigated the continuous involvement of the entire Sudanese state apparatus in the attacks on the villages and, additionally, a different pattern of crimes committed against persons displaced. Such attacks are calculated to drive entire groups to inhospitable areas, where they die immediately, or into camps, where they die slowly. On 4 March 2009, Pre-Trial Chamber I issued an arrest warrant against President Omar Hassan Ahmad Al Bashir for war crimes and crimes against humanity, including the crimes of extermination and rape. The Judges found that the obstruction of humanitarian assistance in Darfur is more than a bureaucratic problem. It constitutes the crime of extermination. After forcing civilians out of their homes, Sudanese forces would deny any meaningful assistance to those who reached the camps for the internally displaced, forcing the UN and others to set up the largest humanitarian operation in the world, and yet obstructing their life-saving efforts each step of the way. I would like to be clear. The crime of extermination does not require

killing by bullets. It consists of intentionally inflicting conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population. This is extermination.

6. In our third case, we are prosecuting the three commanders of the rebel group attack against peacekeepers which took place in Haskanita in September 2007, causing the death of 12 African Union peacekeepers and leaving thousands of people without protection. The Judges have found that the attack constituted a crime under the Statute; however they found the evidence was insufficient to establish the criminal responsibility of rebel commander Abu Garda. The Office will therefore present additional evidence. We anticipate that a new confirmation hearing will be then held in the near future.

7. These are the cases. These are the persons identified as most responsible for the most serious crimes committed in Darfur over the last 6 years. There is no other case at this stage.

Mr. President,

8. Let me now turn to the main point of my briefing today: cooperation.

9. In the past the Government of the Sudan recognized the role of the International Criminal Court and provided cooperation in other cases before the Court, including for the execution of arrest warrants.

10. On 2 October 2005, the Government of the Sudan, without this Council's involvement, signed an agreement with my Office to implement the arrest warrants issued by the ICC against Joseph Kony and four LRA leaders. This cooperation was of critical importance to remove the leaders of the Lord's Resistance Army from their safe haven in the Sudan.

11. In the Darfur case, cooperation was forthcoming for two years. Judicial records and other documents were shared under Article 53 of the Rome Statute, Sudanese officials were interviewed in Khartoum, including as suspects under Article 55, and 5 missions were undertaken to Khartoum, the last in January and February of 2007. In June 2007, the Government of the Sudan accepted the notification of the arrest warrants against Harun and Kushayb. Since then however, there is a public and

consistent refusal to cooperate with the Court and to comply with Security Council Resolution 1593.

12. Therefore, on 25 May 2010, the Pre-Trial Chamber issued its “Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan.” In the decision, the Pre-Trial Chamber considers that the Court has taken *“all possible measures to ensure the cooperation of the Republic of the Sudan”*.

13. The decision stresses *“that the obligation of the Republic of the Sudan to cooperate with the Court stems directly from the Charter of the United Nations and Resolution 1593...”*

14. The Chamber concludes that *“the Republic of the Sudan is failing to comply with its cooperation obligations stemming from Resolution 1593 (2005) in relation to the enforcement of the warrants of arrest issued by the Chamber against Ahmad Harun and Ali Kushayb.”*

15. Under Security Council Resolution 1593, the Security Council decided that the *“Government of Sudan and all other parties to the conflict in Darfur shall cooperate fully and provide any necessary assistance to the Court and the Prosecutor.”*

16. The Government of the Sudan, as the sovereign territorial State, has the primary responsibility and is fully able to implement the warrants issued by the Court. It has not done so. And the Judges have taken the step to make a decision and notify it to the Council.

Mr. President,

17. While cooperation from the Sudan is lacking, it is noteworthy that from all other actors, cooperation is forthcoming.

18. There are 111 States Parties of the Rome Statute with a legal obligation to enforce the Court’s arrest warrants. Additionally, the Security Council urged all UN members to cooperate with the Court. I wish to confirm that as of today, no other State member of the UN and no other party to the conflict has refused cooperation with the Court in the Darfur situation.

19. To the contrary, many States, including non-States Parties of the Rome Statute, following on Security Council Resolution 1593, have taken steps within their power to encourage cooperation by the Sudan and to isolate and ultimately facilitate the

surrender of the individuals sought by the Court. They have maintained and expressed public and diplomatic support for the Court and have severed all non-essential contacts with those subject to ICC warrants.

20. Let me give a few recent examples: President Jacob Zuma from South Africa emphasized on 4 June 2010, that South Africa would arrest anyone under an ICC arrest warrant who traveled to South Africa; this was a strong message of respect for Security Council Resolution 1593 and of support for accountability.

21. President Nicolas Sarkozy took the unprecedented decision to move the date and location of the 25<sup>th</sup> France-Africa Summit to avoid meeting with a person who is the object of an arrest warrant; this was a strong message of respect for Security Council Resolution 1593 and of support for accountability.

22. President Yoweri Museveni recalled that he would abide by his ICC obligations should President Omar Al Bashir attempt to represent the Sudan at the next AU Summit in Kampala.

23. Kenya, on the occasion of the IGAD Summit held in March in Nairobi, stated the same.

24. Non-States Parties have also asserted that those subject to an arrest warrant would need to face justice.

25. UN Secretary-General Ban Ki-Moon has repeatedly reiterated the need to comply with Security Council Resolution 1593 and to respect the decisions of the Court.

26. The African Union and the Arab League, in addition to the United Nations and other international actors, have endeavoured for years to help to end impunity in Darfur. The implementation of the Mbeki Panel recommendations and the July 2008 Arab League solution package will be important steps toward ending crimes in Darfur.

27. In a statement on 23 March 2010, President Mbeki, as the head of the African Union High-Level Implementation Panel, said, "*there is a perfect understanding between the Panel and the International Criminal Court.*" President Mbeki explained that the arrest warrants issued by the Court are a matter of fact and can only be reviewed by the ICC judges; but President Mbeki added that the rest of the crimes committed in Darfur,

should be addressed by the Sudan domestically and the African Union Panel has formulated recommendations in this regard.

Mr. President,

28. All such complementary efforts show compliance with the Security Council and the Court decision. And today the Security Council has the opportunity to further this collective effort.

29. The Council already reminded the Government of the Sudan of its obligation to respect Resolution 1593 during its visit to Khartoum from 16 to 17 June 2007.

30. The Security Council also adopted Presidential Statement 21 two years ago, referring explicitly to the transmission of the arrest warrants against Harun and Kushayb, and urging the Sudan to "*cooperate fully and provide any necessary assistance.*"

31. I hope that the Security Council can build further upon such efforts.

Mr. President,

32. I would like to brief the Council on the alleged crimes committed during the last 6 months in Darfur.

33. I wished to report that the conditions in Darfur improved, that the crimes were stopped.

34. Sadly, the truth is that the attacks against civilians not participating in the conflict continue. In February, immediately after the signing of a peace agreement and public commitments to peace, 100,000 civilians were forcibly displaced by Sudanese armed forces in the Jebel Marra. The *modus operandi* is the same as the one used by Ahmad Harun in 2003-2005: air bombardments followed by attacks of Sudanese armed forces integrating Militia/*Janjaweed*. Identical.

35. Sadly, the crime of extermination against millions displaced into camps continues. Acts aimed at inflicting inhumane conditions of life continue. Under-Secretary General Holmes reported to this Council last week the difficulties to access many areas, the problems of finding interlocutors in Khartoum to address those issues. Those are not technical or bureaucratic issues resulting from disorganization. The decision to expel

humanitarian organizations, and the accumulation of obstacles is a criminal policy of identified Sudanese officials with the aim of committing the crime of “extermination.”

36. Sadly, gender crimes remain unabated in Darfur. In his 19 May report, the UN Independent Expert on the situation of human rights in the Sudan, Justice Mohammed Chande Othman from Tanzania, wrote that *“acts of sexual violence, particularly against IDP females, is still of concern in Darfur....In most instances, the perpetrators were identified as individuals or groups of armed men often dressed in military uniforms. In recent times women living in close proximity to military camps have also become vulnerable to sexual attacks from soldiers...The military authorities on the other hand deny the rape allegations, claiming that the soldiers were engaged in consensual relationships with the women.”*

37. Of even greater concern, the Independent Expert notes victims are increasingly discouraged from reporting rape and sexual violence, because they know they won't benefit from remedial action. Rapes are not stopping; reporting is stopping. This is consistent with the findings of the AU High-Level Panel, which found *“faith in the criminal justice system has been severely eroded”*, and with the findings of others. This is in line as well with the UN Secretary-General's April report, in which he notes: *“There appears to be an overwhelming apathy towards, and unwillingness to investigate, acts of sexual and gender-based violence...”*

38. There is a need for an updated a comprehensive report of the UN Secretariat on the current situations in the camps and the villages. The fragmented information on the rapes, on the obstacles to humanitarian assistance must be put together to allow the international community to consider the current extent of the suffering of the civilians.

39. As I mentioned in my report, there is also an opportunity for the Council, as it prepares for the anniversary of Resolution 1325 and for its special session of October 2010 under the Ugandan Presidency, to implement the groundbreaking resolutions on gender violence in specific situations where crimes are ongoing.

Mr. President,

40. Five years ago, the UN Security Council, considered that the Darfur situation constituted a threat to peace and security and decided to refer the situation to the Court, as part of its efforts to find a global solution to the conflict. Security Council members presented the need to integrate four different tracks in Darfur: humanitarian assistance, peacekeepers, political negotiations and justice. The facts unveiled by the

Prosecution and adjudicated by the Judges shed light on some of the problems faced by the different tracks.

41. The impunity of Ahmad Harun and Ali Kushayb is one of the main problems. It carries a price.

42. Ali Kushayb is a tribal leader, still exercising power in his own area in South Darfur and a vivid example to other *Janjaweed* that they can continue committing crimes, there is impunity. Harun's is a more serious case. Harun's expertise is to mobilize and use militias to attack civilians and to disguise his activities. He was allegedly involved in the worst attacks against civilians in the Nuba Mountains during the 90s. From 1997 to 2000 he was the Executive Director of the Peace and Resettlement Association in South Kordofan, in fact, a secret service institution that collected information to prepare attacks on villages.

43. From 2003 to 2005, as Minister of State for the Interior, Harun coordinated the attacks on civilians in their villages in Darfur.

44. Between 2005 and 2009, Harun was the Minister of State for Humanitarian Affairs, managing the crimes in the camps for displaced people in Darfur.

45. In my December 2007 report, I highlighted to this Council that Ahmad Harun was appointed to a Committee on human rights violations and breaches of the constitution in the South and North. In my June 2008 report, I highlighted that as a member of such Committee, Harun was sent to Abyei to manage the conflict. And, as you know, Abyei was burned down by tribal militias, with 50,000 citizens displaced.

46. Normally fugitives of justice go into hiding. Prosecutors have to unearth their whereabouts. This is not the case here. We know where Ahmad Harun is. Ahmad Harun is currently the Governor of South Kordofan. He should be arrested before he commits new crimes in his new position.

Mr. President,

47. To conclude.

48. I would like to clarify that any discussion on the evidence presented by my Office or on the charges included in the arrest warrants should be conducted in the



courtroom in The Hague. Judges' decisions will not be changed by political negotiations.

49. The decision on Sudanese non-cooperation in relation to Harun and Kushayb was adopted by the Judges and forwarded to this Council. The means to secure compliance by the Sudan of its obligations under UNSC Resolution 1593 are a prerogative of this Council. This Council has dealt before with the non-compliance of States in relation to the enforcement of arrest warrants. I hope the Judges' decision can be acknowledged and followed upon by this Council between now and my next report in December 2010.

50. I would urge Council members to ensure that the arrest of Ahmad Harun and Ali Kushayb be at all times a consistent request of this Organization, through its representatives and envoys in the Sudan, as a critical condition for securing peace and stability to Darfur. This meeting and the Monday meeting of the Council offer a perfect opportunity for its members to integrate the request for the arrest of Harun and Kushayb into the general strategy in relation to Darfur and the Sudan. UNSC Resolution 1593, as well as all other UNSC resolutions, should be complied with.

51. Thank you.