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

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Mr. President,

1. As the Costa Rica Minister for Foreign Affairs, Mr. Bruno Stagno Ugarte, stated to this Council, the “never again” promise is being tested in the Sudan.
2. With Resolution 1593 (2005), the Council took the initiative to refer a situation of ongoing atrocities to a permanent, existing Court. This was a conscious decision, that a judicial investigation of the facts and the identification of those responsible should not wait for the end of the conflict. The ability of the Court to implement immediately its mandate was a crucial factor mentioned by members of the Council in adopting this decision.
3. Investigating Darfur was an enormous challenge for the Court. There were serious allegations of thousands of crimes committed in a vast territory by different parties. The Office conducted an impartial investigation, receiving documents collected by the UN Commission of Inquiry and reports from the Government of the Sudan itself, who even authorized us to interview a General as a suspect in Khartoum. To respect its duty to protect witnesses, the Office had to investigate the crimes without visiting the crime scene. The Office travelled around the world to collect hundreds of testimonies of victims and eyewitnesses who escaped from the Sudan. Most of the evidence is confidential to protect the lives of the witnesses and

their relatives.

4. During the previous briefing, the Sudan challenged the value of the evidence. The Office is prepared to discuss the matter in the courtroom at The Hague before the Judges. That is where evidence is discussed.

5. Ten Judges, members of the Pre-Trial and Appeal Chambers, discussed the value of the evidence collected by the Office of the Prosecutor. They, the Judges, concluded that Government of the Sudan forces committed war crimes and crimes against humanity in Darfur following a strategy adopted at the higher echelons of the State apparatus. The Pre-Trial Chamber identified the individuals that have to face justice and issued arrest warrants against a Militia/*Janjaweed* leader, Ali Kushayb, who reported to the then Minister of State for the Interior, Ahmad Harun, who in turn reported to the then Minister of the Interior Abdel Raheem Muhammad Hussein, who finally reported to President Al Bashir. I would like to clarify that the responsibility of these individuals is not a mere consequence of their official roles. In all the cases there are witnesses that describe in detail their active participation in the strategy to commit crimes.

6. The charges for President Al Bashir include the crime of genocide. The Pre-Trial Chamber concluded that Omar Al Bashir acted with specific intent to destroy in part the Fur, Masalit and Zaghawa ethnic groups.

7. In all the cases the Pre-Trial Chamber considered that arrest is necessary in order to stop the commission of crimes.

Mr. President,

8. The Court fulfilled its judicial mandate. The evidence collected uncovered the functioning of the State apparatus used to commit genocide, crimes against humanity and war crimes. Those who bear the greatest responsibility have been indicted. The current challenge is their arrest.

9. In accordance with Security Council Resolution 1593 (2005), the Government of the Sudan has the legal obligation to implement the arrest warrants. But President Al Bashir is taking advantage of his position of power to continue with his strategy and to ensure his own impunity and the impunity of those who follow his instructions. There is no information to

10. President Al Bashir's strategy includes:

- a. Threats to the international community to commit new crimes in other areas of the Sudan;
- b. Denial of his own crimes, denial of the rapes in the villages and in the camps; attributing the killings to banditry, sporadic clashes between rebel groups, or reducing its relevance through statistical comparisons; and attributing conditions in the camps to other factors like drought, lack of proper seeds, or inability to access farming land;
- c. Forcing the international community into a never-ending negotiation in order to gain access to those displaced;
- d. Offering the permanent promise of a peace negotiation. The international community chases promises of peace agreements that are systematically ignored while President Bashir's forces commits more attacks and creates the conditions for new promises of peace agreements;
- e. Announcing justice initiatives followed only by new announcements, not by action. After more than seven years of instituting judicial mechanisms, the Government of the Sudan has conducted no proceedings relevant to the crimes committed in Darfur; and
- f. Displaying open defiance of the Security Council's authority including through public announcement that the Security Council's resolutions will not be implemented.

Mr. President,

11. The Council is well aware of the situation. Resolution 2035, adopted on 17 February 2012, demanded an end to military action, including aerial bombardments; demanded an end to sexual violence and indiscriminate attacks on civilians; expressed concerns about obstacles deliberately placed in front of the work of the Panel of Experts and of that of UNAMID; and called for the Government of the Sudan to undertake effective efforts to ensure accountability for serious violations of international law and to ensure unrestricted humanitarian access. The Council also expressed "[Regret] that some individuals affiliated with the Government of Sudan and armed groups in Darfur have continued to commit violence against civilians, impede the peace process, and disregard the demands of the Council."

12. The situation is clear. Implementing the arrest warrant will produce a dramatic change in Darfur. In a normal criminal case it is difficult to locate the fugitives. Here it is easy. The whereabouts of the four fugitives in Darfur cases are known. Ali Kushayb remains in Darfur, Ahmad Harun can be found in his Governor's residence in South Kordofan, Abdel Raheem Hussein sits in his office at the Ministry of Defence in Khartoum, and Al Bashir can be found in the Presidential Palace in Khartoum. The next phase in these Darfur cases is to arrest the indictees.

Mr. President,

13. The failure to arrest and surrender Mr. Harun, Mr. Kushayb, Mr. Hussein and President Al Bashir is a direct challenge to the Council's authority. It is for the Council to determine the measures to be adopted to ensure the compliance of the Government of the Sudan with the Security Council resolutions. The reality is that Council members have to reconcile their national interests with their responsibilities for international peace and security. I witnessed the impact of the Security Council acting with consensus. The Office would like to contribute by presenting an option that in due time could be explored by the Council.

14. The execution of the arrest warrants on the Sudanese territory is the primary responsibility of the Government of the Sudan and UNAMID should not be authorized to carry out or assist to secure arrests. Instead, the Council can in due course evaluate other possibilities, including asking UN Member States or regional organizations to execute arrest operations in furtherance of the arrest warrants issued by the International Criminal Court.

15. Such a decision may be problematic, but the victims will receive a clear message: they are not ignored. And the perpetrators will receive a clear message: there will be no impunity.

Thank you.