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Security Council

Sixty-sixth year

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6688th meeting

Thursday, 15 December 2011, 10 a.m.
New York

President:	Mr. Churkin	(Russian Federation)
Members:	Bosnia and Herzegovina	Mr. Vukašinović
	Brazil	Mrs. Viotti
	China	Mr. Wang Min
	Colombia	Mr. Osorio
	France	Mr. Araud
	Gabon	Mr. Moungara Moussotsi
	Germany	Mr. Wittig
	India	Mr. Hardeep Singh Puri
	Lebanon	Mr. Salam
	Nigeria	Mr. Amieyeofori
	Portugal	Mr. Cabral
	South Africa	Mr. Nel
	United Kingdom of Great Britain and Northern Ireland	Sir Mark Lyall Grant
	United States of America	Mr. DeLaurentis

Agenda

Reports of the Secretary-General on the Sudan

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The meeting was called to order at 10.05 a.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan

The President (*spoke in Russian*): Under rule 37 of the Council's provisional rules of procedure, I invite the representative of the Sudan to participate in this meeting.

Under rule 39 of the Council's provisional rules of procedure, I invite Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court, to participate in this meeting.

On behalf of the Council, I welcome the presence at this meeting of His Excellency Mr. Andries C. Nel, Deputy Minister of Justice and Constitutional Development of South Africa.

The Security Council will now begin its consideration of the item on its agenda.

I now give the floor to Mr. Moreno-Ocampo.

Mr. Moreno-Ocampo: I am honoured to brief the Security Council on the activities of the International Criminal Court following the adoption of resolution 1593 (2005).

As the Council will recall, in our first case, we investigated attacks by the forces of the Government of the Sudan against the civilian population during the period from 2003 to 2005. The evidence showed that the Sudanese Armed Forces would bomb villages in Darfur and surround them, and then ground troops would move in to kill, rape and pillage civilians in their homes. Those 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 and of militia/Janjaweed leader Ali Kushayb as the ground commander of some of the attacks.

On 27 April 2007, Pre-Trial Chamber I issued arrest warrants against both individuals for war crimes and crimes against humanity. The Chamber found that the crimes were the consequence of a coordinated effort supervised by a clear chain of command. The Pre-Trial Chamber ruled that local security committees had coordinated those attacks. They were supervised by State security committees, which reported to Mr. Harun, acting at the Darfur security desk.

A few days ago, the Office requested an additional warrant of arrest for then Minister of the Interior Abdelrahim Mohamed Hussein, who is currently Minister of Defence. We are charging him with the same crimes charged in the case *Prosecutor vs. Harun and Kushayb*, thus expanding the number of suspects in the first case.

The evidence shows that Mr. Hussein was also involved in the crimes committed by his subordinate Harun. Between 2003 and 2005, Mr. Hussein was the Minister of the Interior and Special Representative of the President in Darfur, with all of the powers and responsibilities of the President. Mr. Hussein delegated some of his responsibilities to his deputy, Mr. Harun, but the evidence shows that, directly and through Mr. Harun, Mr. Hussein played a central role in coordinating the crimes, including in recruiting, mobilizing, funding, arming, training and deploying the militia/Janjaweed as part of the Government of the Sudan forces, with the knowledge that these forces would commit crimes.

In the second case, the Office identified the responsibility of the President of the Sudan, Mr. Al-Bashir. He launched attacks against villages and publicly instructed his forces to take no prisoners or wounded, but to leave behind only scorched Earth. President Al-Bashir's genocidal intentions were clear when he denied any assistance to entire groups forced out of their homes to inhospitable areas. They were condemned to die in the desert.

The United Nations and other humanitarian agencies saved lives by setting up the largest humanitarian operation in the world. President Al-Bashir confirmed his genocidal intentions by ordering a different type of attack against those in the camps through rape and hunger. President Al-Bashir appointed Ahmed Harun Minister of State for Humanitarian Affairs to be in charge of the victims he had displaced. As of September 2005, Harun obstructed humanitarian efforts each step of the way. The crimes of extermination and genocide under article 6(c) do not require killing by bullets. They consist of intentionally inflicting conditions of life — such as the deprivation of access to food and medicine — calculated to bring about the destruction of part of a population or a group.

That was the conclusion reached by the Pre-Trial Chamber on 4 March 2009, when it issued an arrest warrant against President Al-Bashir for war crimes and crimes against humanity, including the crimes of extermination and rape. More than one year later, on 12 July 2010, Pre-Trial Chamber I issued a second arrest warrant for President Al-Bashir for three counts of genocide, including rape as a form of genocide and genocide by deliberately inflicting conditions of life calculated to bring about physical destruction.

In our third case, we are prosecuting two commanders of the rebel groups that attacked African Union peacekeepers in their base at Haskanita in September 2007. They killed 12 African Union peacekeepers, looted the entire base, and left thousands of people displaced in the area without protection. The two commanders charged, Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus, are members of the Zaghawa, one of the ethnic groups targeted by President Al-Bashir. On 17 June 2010, they appeared voluntarily before the Court and both have committed to surrender to the Court for trial. The trial should start in 2012.

Interestingly, the rebel commanders accepted their actual participation in the attack and are contesting only three specific issues at trial: whether the attack was unlawful; whether they knew it to be so; and, most importantly, whether the African Union Mission in the Sudan was a peacekeeping mission in accordance with the Charter of the United Nations. If such issues are settled in favour of the Prosecution, the accused persons will plead guilty to the charges against them.

These are the cases. We are still evaluating the responsibility of Mr. Abu Garda, the leader of the rebel attack, against whom charges were not confirmed. These are the persons identified as most responsible for the most serious crimes committed in Darfur over the past six years. In order to facilitate any decision of the Council, I want to state that there is no sealed arrest warrant requested or pending. There is no other case at this stage.

My duty as Prosecutor is to galvanize efforts to implement the arrest warrants issued by the Court. In accordance with resolution 1593 (2005), the Government of the Sudan has the legal obligation to cooperate with the International Criminal Court. However, in 2007, after the issuance of the arrest warrant against Harun and Kushayb, President Al-Bashir publicly refused to implement them, challenged the Security Council's authority and stated that Harun had done what he had been ordered to do.

In 2009, after the Court issued an arrest warrant against him, President Al-Bashir expelled humanitarian organizations that provided more than half of the total amount of aid delivered. He confirmed his criminal plans to exterminate those ethnic groups displaced. In addition, President Al-Bashir blackmailed the international community by threatening to commit the same crimes in the south of the country, threatening the North-South peace process. President Al-Bashir was trying to avoid isolation and campaigned at the African Union and elsewhere for political support.

Muammar Al-Qadhafi supported this campaign and, as the Chairman of the African Union, at the last minute of the African Union Summit in Sirte, on 3 July 2009, he promoted the adoption of the following clause:

> "In view of the fact that the request by the African Union for an article 16 deferral had never been acted upon, the African Union Member States shall not cooperate pursuant to the provisions of article 98 of the Rome Statute of the International Criminal Court relating to immunities, for the arrest and surrender of President Omar Al-Bashir of the Sudan".

On 26 May 2010, Pre-Trial Chamber I decided that the Government of the Sudan was not cooperating with the Court, in violation of resolution 1593 (2005) and communicated this decision to the Security Council.

Cooperation is being extended by other countries. On 28 November, the High Court of Kenya implemented an arrest warrant against President Al-Bashir following the decision of the International Criminal Court. President Al-Bashir retaliated diplomatically against the Kenyan decision and threatened economic and trade sanctions.

Most importantly, Malawi — pursuant to the argument laid out in the African Union resolution that I cited earlier — recently refused to arrest President Al-Bashir. However, on 12 December, Pre-Trial Chamber I issued a decision pursuant to article 87(7) of the Rome Statute on the failure by the Republic of Malawi to comply with the cooperation requests issued by the court with respect to the arrest and surrender of

Omar Hassan Ahmad Al-Bashir. The Chamber found that

> "customary international law creates an exception to Head of State immunity when international courts seek a Head of State's arrest for the commission of international crimes. There is no conflict between Malawi's obligations towards the Court and its obligations under customary international law".

Therefore, the Chamber concluded, article 98(1) of the Statute does not apply.

Furthermore, the Chamber decided that Malawi had failed to comply with its obligations to consult with the Chamber and failed to cooperate with the Court by failing to arrest and surrender President Al-Bashir. A similar decision was taken a day later by Pre-Trial Chamber I in relation to Chad. The Security Council and the Assembly of States parties were informed of both decisions.

In conclusion, the arrest warrants issued by the International Criminal Court shall be implemented. The Security Council resolutions shall be respected. Millions of civilians in Darfur shall be protected. The individuals sought by the Court are still allegedly committing genocide and crimes against humanity in Darfur.

It is the case that the world knows where the fugitives from the Court are, for they are in official positions, controlling the Government of the Sudan and commanding military operations in different parts of the Sudan. Harun is the Governor of Southern Kordofan state, presenting himself as the man to solve problems. The attempts to appease them and reward them with money and recognition are not working.

Civilians in Darfur continue to be subject to indiscriminate aerial bombardment, despite numerous injunctions by the Council that such bombardments cease. Likewise, the numerous injunctions by the Council that the militia/Janjaweed be disarmed have not resulted in their disarmament. It is very easy to produce a long list of false promises and refusals to abide by previous commitments.

The execution of the arrest warrants will end the crimes in Darfur. In the coming months, the Court will decide on the arrest warrant requested against Minister of Defence Hussein. Such a decision will provide a new opportunity to the Council to develop a strategy to implement resolution 1593 (2005) and presidential statement S/PRST/2008/21.

My next report, in June 2012, could offer an opportunity to establish consensus on the way forward. The African Union and the League of Arab States should play a central role to achieve a solution that respects the Security Council's authority and the Judges' decisions. The Government of the Sudan has to review its policy and receive a clear message and adjust to the world. People in Darfur need the Security Council's leadership.

The President (*spoke in Russian*): I thank Mr. Moreno-Ocampo for his briefing.

I now give the floor to the representative of the Sudan.

Mr. Osman (Sudan) (*spoke in Arabic*): I would first like to say that the records of this meeting should reflect an important truth, namely, that our participation in this meeting should in no way be interpreted as Sudan dealing with the International Criminal Court (ICC). As the Council is aware, the Sudan is not a party to the Rome Statute and we are in no way affected by the Court's proceedings. Our participation in this meeting is based on the need to shed light on the truth of what is taking place in Darfur. The baseless accusations in the report given to the Council today stand in complete contradiction to the situation in Darfur. Moreover, they contradict the report (S/2011/643) of the Secretary-General on Darfur and the various statements made by senior officials of the Department of Peacekeeping Operations.

Paragraph 20 of the Secretary-General's latest report on the situation in Darfur, which Mr. Hervé Ladsous, Under-Secretary-General of the Department of Peacekeeping Operations, presented to the Council on 25 October (see S/PV.6638), refers to the decrease in violence in Darfur resulting from clashes between Government and movement forces, including a drop in the number of deaths from 1,039 in 2010 to 342 thus far in 2011. Paragraph 38 of the report refers to the ongoing voluntary return of internally displaced persons and refugees to their places of origin. With regard to the protection of civilians, paragraph 49 refers to a decrease in protection incidents this year over the last one due to the intervention of the African Union-United Nations Hybrid Operation in Darfur (UNAMID).

Who are we to believe, then, the reports and their precise statistics or the usual lies and false accusations? Are we to believe the report of UNAMID, the mission actually on the ground in Darfur, or the information provided by the Prosecutor? We do not know where that information came from. What kind of justice are we talking about here? Those who act in this way must answer to their conscience. History will not forgive them. Such false accusations run counter to reason and to the basic standards of a professional attitude. I am quite certain that the Council will dismiss them.

This time, the Prosecutor focused mainly on the case of the Prosecutor versus the national Minister for Defence, after having attempted to alter reality to justify his allegations by saying that it was the Minister for Defence who had appointed Mr. Ahmad Harun. However, he reveals the true motives behind those proceedings in paragraph 12 of the report before the Council, in which he notes that Mr. Hussein has been Minister of Defence since 2005, when the Sudanese Armed Forces were engaged in armed conflict in various regions of the country, including Southern Kordofan and Blue Nile states. Therefore, an important question arises. If the armed forces of any country were facing armed rebels who were jeopardizing the security and stability of that country, would the Prosecutor issue an arrest warrant against the Minister of Defence?

Members may have noted that the Prosecutor deliberately ignored the most important historic event regarding the situation in Darfur, namely, the signing of the Doha Document for Peace in Darfur. There can be no doubt that those who are aware of those events know why the Prosecutor ignored the Doha Document. He did so because chapter V of the Document, entitled "Justice and Reconciliation", stresses national justice procedures, which means refusing the prerogatives of the ICC, which has no competence in the Sudan because the Sudan is not a party to the Rome Statute and therefore under no obligation to deal with the Court. I need not recall that the Vienna Convention on the Law of Treaties confirms that States not parties to a convention are not bound to comply with it.

Were we to be asked why we have not acceded to or ratified the Rome Statute, we would reply that like many other sovereign States, including members of the Council, we have various reasons, which we have shared on other occasions. I shall merely mention one that appears to me to be sufficient to illustrate the reasons we have not acceded to the Rome Statute. The Statute places the Prosecutor above accountability, and there is no guarantee of the Prosecutor's compliance with the principles of neutrality and professional integrity.

Allow me to put forward an argument made by Ms. Condoleeza Rice, former Secretary of State of the United States. On page 188 of her book entitled *No Higher Honor: A Memoir of My Years in Washington*, she states:

(*spoke in English*)

> "[We] opposed the ICC on the grounds, among others, that its prosecutor is not accountable to any Government. For us this was an issue of sovereignty and a step that looks a bit too much like 'world government'."

(*spoke in Arabic*)

There is no doubt that members of the Council agree with me that the principle of sovereignty is one and indivisible, whether with regard to a super-Power or a small State. Therefore, we have freely not ratified the Statute, like others who did likewise. Consequently, we are not bound by the Rome Statute. The reservation that we have mentioned with regard to the lack of accountability on the part of the Prosecutor, in the event that he does not abide by the principles of professional integrity and impartiality, has been justified. I would like to share with the Council several examples providing evidence in that regard.

The International Commission of Inquiry on Darfur, under the chairmanship of the late Judge Antonio Cassese, submitted its report to the Secretary-General of the United Nations (S/2005/60, annex), pursuant to Security Council resolution 1564 (2004). On page 4 of its report, the Commission concluded that the Government of the Sudan had not pursued a policy of genocide.

In addition, the report has proven the absence of the main element of the charge of genocide, namely, the intention to commit acts of genocide. The Commission, which was chaired by Mr. Cassese, an outstanding international jurist, also stated that the crucial element, namely, genocidal intent, appeared to be missing, at least as far as the central Government authorities were concerned.

Another source, an official of an internationally credible organization, Dr. Mercedes Taty, a former Deputy Emergency Director for Médecins sans frontières, stated in an MSNBC interview on 16 April 2004 that she did not think that the word ‘genocide’ should be used to describe the conflict in Darfur.

Another example, taken from outside the Sudan, which refutes the allegations of the Prosecutor, who has considerably compromised his professional integrity and impartiality, was given by Dr. Jean-Hervé Bradol, past President of Médecins sans frontières in France, who said:

(*spoke in English*)

“Our teams have not seen evidence of the deliberate intention to kill people of a specific group” and that the use of the term “genocide” was inappropriate.

(*spoke in Arabic*)

Dr. Bradol worked in Darfur and was a member of a credible volunteer organization in a country that respects the values of justice.

(*spoke in English*)

Dr. Bradol subsequently described the claims of genocide propagated by a certain circle as “obvious political opportunism”. I refer here to an article that appeared in *The Financial Times* on 6 July 2004, and a news article by Agence France Presse. I would also mention another article by Dr. Bradol, entitled “From one genocide to another”, dated 28 September 2004.

I can provide more details for all the sources that I have cited, just to show that our sources are credible, while the other party simply propagates unfounded allegations without referring to even a single credible source, let alone factual information.

(*spoke in Arabic*)

Another source is the European Union (EU) fact-finding mission that was dispatched to Darfur in 2004, at the zenith of the conflict. The official spokesperson of that mission stated:

(*spoke in English*)

“We are not in the situation of genocide there”. He added that the EU saw abuses, but not genocide, in Darfur. I refer here to a Reuters news article of 9 August 2004.

(*spoke in Arabic*)

Speaking to Al-Jazeera on 10 August 2004, the spokesperson of the EU fact-finding mission stated that

(*spoke in English*)

“the EU mission finds no evidence of genocide in Darfur”. I would note that he actually travelled to Darfur and did not simply carry out his assignment from some unknown remote location.

(*spoke in Arabic*)

Another source is Mr. John Danforth, who at the time was serving as the Special Envoy for Peace in the Sudan of former President Bush. On 3 July 2005, in a BBC Panorama interview, he stated that

(*spoke in English*)

the use of the genocide label “was something that was said for internal consumption within the United States”. He is a credible source who is from the United States itself.

(*spoke in Arabic*)

Another source is former Nigerian President Olusegun Obasanjo, the then President of the African Union and host of the Inter-Sudanese Peace Talks on the Conflict in Darfur held in Abuja. He stated,

(*spoke in English*)

> “What we know is that there was armed rebellion, and the government repelled them. That does not amount to genocide from our own reckoning.”

Another example is Mr. Jan Egeland, former Under-Secretary-General for Political Affairs, saying ethnic cleansing did not “fit [the legal definition of] events in Darfur”.

The last example is Mrs. Asma Jahangir, the United Nations Special Rapporteur on extrajudiciary, summary and arbitrary executions, at the height of the conflict in Darfur told the BBC on 8 June 2004: “I would not categorize it as ethnic cleansing at the moment because that is not the impression that I am getting.”

(*spoke in English*)

The reference is BBC News, 8 June 2004. Here again, I ask the person who spoke before me just to provide a single source for his allegations.

(*spoke in Arabic*)

I have cited examples that refute the allegations of the Prosecutor and show the lack of authenticity in the most serious accusation, that of ethnic cleansing, with which he charged President Ahmad Al-Bashir. If that is his approach, which I have just disproved before the Council — not on the basis of Sudanese arguments and contentions, but by examples from a range of credible heads of international and voluntary organizations, senior United Nations officials and senior politicians, such as Mr. Danforth, President Bush's special envoy to the Sudan — then what are we to make of all those false allegations and charges that he has made against a number of Sudanese officials? The most recent was the current Minister of Defence, Mr. Abdelrahim Mohamed Hussein, who had previously fulfilled his national duties as Minister of Interior when he contained the armed rebellion. His current actions as Minister of Defence, protecting the country against armed rebel movements that threaten the peace, stability and security of the country, and the considerable efforts he has made have led to the establishment of peace, security and stability in the Sudan from Darfur to the Nuba Mountains and as far as Blue Nile state.

We challenge anyone to say that there is now one single outbreak of violence or battle happening anywhere in the Sudan. Life has returned to normal. It is a source of pride for those who have been falsely accused by the Prosecutor that they were a central part of the Government of the Sudan that negotiated and implemented the Comprehensive Peace Agreement, which ended the longest war in Africa and led to the peaceful establishment of the South Sudan. How can those who have tried to make peace for more than 60 years be falsely accused by those who do not respect the principle of impartiality and have no professional integrity, as defined in the provisions of the United Nations Charter?

With regard to the responsibility of the military State to ensure peace and security throughout the country, the Government of the Sudan opens the doors wide to the rebels in the various regions of the country and calls on them to have the sense to come and negotiate with a view to reaching peaceful solutions. The Doha Document for Peace in Darfur is the most credible example of our Government's eagerness to achieve peace. All leaders of the 11 rebel factions who came from outside the country were originally from Darfur. Having signed the Doha Document, they returned to the Sudan and engaged with the Government and our people in Darfur to implement the Agreement in order to achieve development, peace and justice.

The situation in Darfur has improved considerably. Only a blind person cannot see that. The contents of the most recent report of the Secretary-General (S/2011/643) are clear proof of it. I therefore appeal to the Council, which is entrusted with the maintenance of peace and security, to assist the Government of the Sudan in our efforts to complete the drive for peace and, through its commendable efforts, to encourage and urge the remaining rebel movements in Darfur, the Blue Nile and Southern Kordofan to come and negotiate with us so that we can all live in a homeland for us all. I am confident that the Council will not heed those who propagate the culture of war.

In conclusion, it is clear that the Prosecutor intentionally ignored the most important historic event in Darfur, namely, the Doha Document for Peace. That was acknowledged in a previous resolution (2003 (2011). I am confident that the Council will continue to support that considerable effort, which is about to conclude and of which we are in the final phase.

The President (*spoke in Russian*): In accordance with the understanding reached in the course of the Council's prior consultations, I now invite Council members to informal consultations to continue our discussion of the subject in a closed meeting.

The meeting rose at 11 a.m.