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Introductory Note to the International Criminal Court: Summary of the Prosecutor's Application Under Article 58

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INTRODUCTORY NOTE TO THE INTERNATIONAL CRIMINAL COURT: SUMMARY OF THE
PROSECUTOR'S APPLICATION UNDER ARTICLE 58
BY MILENA STERIO*
[November 20, 2008]
+Cite as 48 ILM 406 (2009)+

Luis Moreno-Ocampo, Chief Prosecutor at the International Criminal Court ("ICC"), undertook a significant step in his office's investigation of the situation in Darfur, Sudan, on November 20, 2008, when he requested Pre-Trial Chamber I ("PTC1") to issue an arrest warrant against three named individuals ("Application").¹ These individuals ("Defendants"), whose names have remained confidential,² were commanders of rebel groups in Darfur that had carried out an attack on September 29, 2007 against African Union Mission in Sudan ("AMIS") peacekeepers stationed at the Haskanita Military Group Site ("Haskanita MGS").³ The three Defendants commanded forces of around 1,000 men; such forces attacked Haskanita MGS, resulting in the death of twelve peacekeepers, the wounding of eight peacekeepers, as well as the destruction of communications installations, dormitories, vehicles and other materials belonging to the AMIS.⁴ In addition, the three Defendants personally participated, along with their forces, in the pillaging of Haskanita MGS and the theft of several vehicles, computers, cellular phones, military clothing, fuels, ammunition, refrigerators, and money.⁵ The Prosecutor applied for an arrest warrant of the three Defendants under Article 58(1)(b) of the Rome Statute,⁶ accusing them of war crimes, and explaining that "[u]nder the Statute, intentionally directing attacks against personnel and property involved in a peacekeeping mission in accordance with the United Nations Charter and killing of peacekeeping personnel taking no active part in hostilities are war crimes"⁷ The Prosecutor furthermore indicated in the arrest warrant Application that his office was willing to pursue a summons to appear as an alternative to the arrest warrant, should the Defendants express their willingness to voluntarily appear before the ICC.⁸

The Prosecutor's willingness to seek the arrest and to then indict more individuals from the Darfur region signals his office's commitment to end the cycle of impunity in Darfur and to bring justice to the victims of this war-torn region. While the conflict in Darfur began in 2003, the ICC did not start actively investigating the situation in Darfur until the fall of 2005, when the United Nations Security Council referred this situation to the ICC under Security Council Resolution 1593 (2005).⁹ Since 2005, the Prosecutor has applied for three arrest warrants against defendants from the Darfur region: Ahmad Harun; Ali Kushayb; and the current Sudanese president, Al-Bashir.¹⁰ In each instance, PTC1 agreed to issue the arrest warrant.¹¹ It is thus significant and foretelling that the Prosecutor has decided to pursue more active cases from the Darfur region, in an effort to signal to the world community, and to Sudan and other rogue regimes, that atrocities – especially when committed against peacekeepers and other international relief efforts – will not be tolerated and that perpetrators of such atrocities will be punished.

In his Application for the arrest warrant against the Defendants, the Prosecutor specifically relied on Article 58(1)(b) of the Rome Statute, which provides that the Prosecutor may apply for an arrest warrant if it is satisfied that this aggressive measure is necessary to ensure one of three things: the person's presence at trial; that the person will not obstruct the ongoing investigation; or to prevent the person from continuing to commit the same, or other, crimes.¹² In order for PTC1 to issue the arrest warrant, it must be satisfied that "there are reasonable grounds to believe that at least one crime within the jurisdiction of the Court has been committed and that there are reasonable grounds to believe that [the defendants] are criminally responsible for such crimes."¹³ Using this criterion, PTC1 has repeatedly found that there were reasonable grounds to believe that each of the three other Darfur suspects had committed crimes that they stood accused of; thus warranting the issuance of arrest warrants by the PTC1 over the three other above-mentioned Darfur suspects (Ahmad Harun, Ali Kushayb and Al-Bashir).¹⁴ In the present case, the Prosecutor decided to rely on such favorable precedent and to request PTC1 to issue arrest warrants against the three Defendants.

Interestingly, the Prosecutor indicated in his Application that his office was willing to seek a less aggressive form of relief, a summons to appear under Article 58(7) of the Rome Statute, against the Defendants, should they indicate that they are willing to appear before the ICC.¹⁵ In two previous cases, against Ahmad Harun and Ali Kushayb, the Prosecutor had originally filed an application for a summons to appear in The Hague, and had only

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requested the issuance of an arrest warrant under Article 58(1) in the alternative.¹⁶ Thus, in the early cases of the Darfur investigation, the Prosecutor had proceeded with caution and had prioritized the issuance of the less aggressive summons to appear over the more extreme and aggressive arrest warrant. However, PTC1 itself reversed the Prosecutor's preference in the Ahmad Harun and Ali Kushayb cases and found reason to issue the more aggressive arrest warrants under Article 58(1).¹⁷ PTC1 held in the two above cases that an Article 58(7) summons to appear only made sense when the Chamber was satisfied "that a summons is sufficient to ensure the person's appearance."¹⁸ PTC1 moreover specified that the application of Article 58(7) was "restricted to cases in which the person can and will appear voluntarily before the Court without the necessity of presenting a request for arrest and surrender"¹⁹ On the contrary, "the issue raised by Article 58[1] of the Statute is whether or not the arrests of these persons appear to be necessary."²⁰ In the present case, the Prosecutor saw no apparent reason to act timidly and requested directly the issuance of an arrest warrant, followed, in the alternative, by a request for a summons to appear, because the Defendants had not displayed any willingness to appear at The Hague voluntarily, and because PTC1 had already decided that in such cases, the issuance of an arrest warrant would "appear to be necessary."

It will be interesting to follow this case to discover whether PTC1 ultimately issues the arrest warrant. In fact, ulterior filings in this case indicate some reluctance on behalf of PTC1 to engage in rash decision-making by issuing arrest warrants too quickly or prematurely. On December 9, 2008, PTC1 issued a decision requesting the Prosecutor to submit additional information and supporting materials in relation to the Prosecutor's Application for a warrant of arrest under Article 58(1).²¹ On January 16, 2009 the Prosecution submitted such supplemental information to PTC1.²² On February 3, 2009, PTC1 convened a hearing to discuss certain issues raised by the Prosecution's request.²³ On February 23, 2009, the Prosecution provided PTC1 with more supplemental information, and on February 25, 2009, the Prosecution filed a request for an expedited decision on the Prosecution's original Application.²⁴ On March 2, 2009, PTC1 denied the Prosecution's request for an expedited decision, holding that "the Prosecution Application for the alleged [Defendants] raises a number of issues of particular complexity," that "a particularly detailed analysis of the materials provided in the Prosecution Application" was needed, and that, before issuing an arrest warrant, it needed to conduct a "detailed overall assessment of all information and materials provided by the Prosecution."²⁵ On March 6, 2009, the Prosecution requested PTC1 once again to expedite its decision over the Application for an arrest warrant, alleging that new judges would be sworn in on March 11, 2009, that this would change the current composition of PTC1, and that any "new" PTC1 would require substantial additional time to familiarize itself with the case and the ongoing Darfur situation.²⁶ On March 10, 2009, PTC1 again rejected the Prosecution's second request for an expedited decision.²⁷

While PTC1 may ultimately grant the Prosecution's request for an arrest warrant, it has clearly indicated its willingness to methodically study the case and the record before it, in order to make the most prudent decision. The ICC on the whole may be moving in the direction of accountability for the Darfur region in general, but its judges seem unwilling to compromise procedural or substantive safeguards, as they relate to the issuance of the most drastic measure under the ICC Statute, the arrest warrant under Article 58. Thus, while the Defendants from this Application, and/or any other defendants from the Darfur region may ultimately end up in ICC's custody at The Hague, their procedural rights will be strictly respected by PTC1, and their forced appearance at the tribunal will only ensue if ICC judges are satisfied that harsh measures, like arrest warrants under Article 58, are necessary. Moreover, ICC judges may be reluctant to issue arrest warrants before reviewing complete records and substantial evidence before them in light of political and diplomatic pressure such arrest warrants cause to both the suspects' state, as well as any neighboring states where such suspects may attempt to flee. In fact, under the Rome Statute, any ICC member state would have the obligation to deliver suspects over whom an arrest warrant has been issued to The Hague.²⁸ PTC1 judges have just signaled to the Prosecutor that the imposition of such significant (and possibly difficult) obligations on ICC member states may be justified only if the full evidentiary record supports this conclusion, and only if ICC judges have had ample time to study the record and to make such a determination.²⁹

ENDNOTES

1 Situation in Darfur, the Sudan, Case No. ICC-02/05-162, Summary of the Prosecutor's Application under Article 58 (Pre-Trial Chamber I, Nov. 20, 2008), ¶ 1, at <http://www2.icc-cpi.int/iccdocs/doc/doc589950.pdf> [hereinafter Application].

2 The Prosecutor initially maintained the confidential character of the identity of the three Defendants from the Application, as it filed the Application confidential and ex parte. *Id.* Subsequently, however, the Prosecutor requested from PTC1 authorization to disclose the Defendants' names, in filings of December 22, 2008 and December 24, 2008. Situation in Darfur,

the Sudan, Case No. ICC-02/05-167-Conf-Exp, Notification to Pre-Trial Chamber I Pursuant to Article 58 (Dec. 22, 2008); and Situation in Darfur, the Sudan, Case No. ICC-02/05-168-Conf-Exp, Notification to Pre-Trial Chamber I Pursuant to Article 58 (Dec. 24, 2008). PTC1 denied the Prosecutor's request to disclose the Defendants' names on December 24, 2008. See Situation in Darfur, the Sudan, Case No. ICC-02/05-169-Conf-Exp, Notification to the Chamber Pursuant to Article 58 (Dec. 24, 2008). Thus, the Defendants' names have remained confidential. (Note that the decisions here are all referenced in the *Decision on Prosecution's Request for Expedited Decision on the Prosecution's Application of 20 November 2008*, Case No. ICC-02/05-199, n.7-8 (Mar. 2, 2009) [hereinafter *Decision on Request for Expatriated Decision*]; these decisions are confidential and are not part of the Court's public records/documents, and are thus not available on the Court's website).

3 Application, *supra* note 1, ¶¶ 3-4.

4 *Id.* ¶ 4.

5 *Id.*

6 Rome Statute of the International Criminal Court, U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome Statute on the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF.189/9 (1998), 37 I.L.M. 999 (1998) [hereinafter *Rome Statute*].

7 Application, *supra* note 1, ¶ 5. More specifically, the Prosecutor requested the issuance of arrest warrants against the three named military commanders for the war crimes of violence to live (murder and causing severe injury to peacekeepers) under Art. 8(2)(c)(i), intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission under Art. 8(2)(e)(iii), and pillaging under Art. 8(2)(e)(v) of the Rome Statute, committed on Sept. 29, 2007 in Darfur. *Id.* ¶ 1.

8 Application, *supra* note 1, ¶ 10.

9 S.C. Res. 1593, 6, U.N. Doc. S/RES/1593 (Mar. 31, 2005).

10 Situation in Darfur, the Sudan, Case No. ICC-02/05-55-US-Exp, Prosecutor's Application under Art. 58(7) (Feb. 27, 2007), at <http://www2.icc-cpi.int/iccdocs/doc/doc259838.PDF>; Situation in the Central African Republic, Prosecutor v. Jean-Pierre Bemba Gombo, Case No. ICC-01/05-15 1-US-Exp, Application for Request for Provisional Arrest under Article 92 (May 23, 2008); and ICC-02/05-151-US-Exp-Anxs I-89; Corrigendum ICC-02/05-151-US-Exp-Corr and Corrigendum ICC-02/05-151-US-Exp-Corr-Annx 1&2; and the public redacted version ICC-02/05-157 and ICC-02/05-157-Annx A (note that these documents are referenced in n.1 of the *Decision on Prosecution's Request for Expedited Decision*, *supra* note 2. They refer to the Prosecution's application under Article 58 of July 14, 2008 for the arrest warrant of Al Bashir).

11 Prosecutor v. Ahmad Muhammad Harun & Ali Muhammad Ali Abd-al-Rahman, Case No. ICC-02/05-01/07, Decision on the Temporary Designation of a Single Judge (Aug. 16, 2007), at <http://www2.icc-cpi.int/iccdocs/doc/doc319275.PDF> [hereinafter *Harun & al-Rahman*]; Warrant of Arrest for Omar Hassan Ahmad Al Bashir of March 4, 2009, Case No. ICC-02/05-01/09-1 (Mar. 4, 2009), at <http://www.icc-cpi.int/iccdocs/doc/doc639078.pdf>.

12 Article 58(1) of the Rome Statute of the ICC states: "At any time after the initiation of an investigation, the Pre-Trial

Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if, having examined the application and the evidence or other information submitted by the Prosecutor, it is satisfied that: (a) There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court; and (b) The arrest of the person appears necessary: (i) To ensure the person's appearance at trial; (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances."

13 Harun & al-Rahman, *supra* note 11, ¶ 26.

14 See *supra* note 8.

15 Application, *supra* note 1, ¶ 10.

16 See David Scheffer, *Introductory Note to Decision on the Prosecution Application under Article 58(7) of the Statute In the Case of The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Al Abd-A-Rahman*, 46 I.L.M. 532 (describing why the Prosecutor had originally filed an application for a summons to appear instead of an application for an arrest warrant in the case of Ahmad Harun and Ali Kushayb).

17 Harun & al-Rahman, *supra* note 11.

18 *Id.* ¶ 115.

19 *Id.* ¶¶ 117-18.

20 *Id.*

21 Situation in Darfur, the Sudan, Case No. ICC-02/05-166, Decision Requesting Additional Information and Supporting Materials (Dec. 9, 2008), at <http://www2.icc-cpi.int/iccdocs/doc/doc608293.PDF>.

22 Situation in Darfur, the Sudan, Case No. ICC-02/05-172, Prosecution's Provision of Further Information in Compliance with the "Decision Requesting Additional Information and Supporting Materials" (Jan. 16, 2009).

23 Situation in Darfur, the Sudan, Case No. ICC-02/05-203, Prosecution's Provision of Further Information Pursuant to the "Decision Requesting Additional Information and Supporting Materials", and Urgent Request for Expedited Consideration of the Prosecution's Application under Article 58 (Mar. 6, 2009), ¶ 5, at <http://www.icc-cpi.int/iccdocs/doc/doc641539.pdf> [hereinafter *Urgent Request*].

24 Situation in Darfur, the Sudan, Case No. ICC-02/05-194-Conf-Exp, Submission of Information on the Prosecution's Application Pursuant to Article 58 and Request for Summonses to Appear (Feb. 23, 2009); Situation in Darfur, the Sudan, Case No. ICC-02/05-195-Conf-Exp (Feb. 25, 2009) (Note that these are all probably confidential documents; they are references in n.11, 12 of the *Decision on Prosecution's Request for Expedited Decision*, *supra* note 2).

25 Decision on Prosecution's Request for Expedited Decision, *supra* note 2.

26 Urgent Request, *supra* note 23.

27 Situation in Darfur, the Sudan, Case No. ICC-02/05-205, Decision on the Prosecution's Requests of 5 and 6 March 2009 (Mar. 10, 2009).

28 Rome Statute, *supra* note 6, art. 89. In fact, should PTC1

decide to issue an arrest warrant in this case over the Defendants, PTC1 would then direct the ICC registry to prepare requests for cooperation, which would be submitted to Sudanese authorities, all State Parties to the Rome Statute, all U.N. Security Council member that are not already party to the Rome Statute, and Sudan's neighboring states, such as Egypt, Eritrea, Ethiopia, and Libya. PTC1 would direct the ICC Registrar to comply with Article 92 of the Rome Statute and Rule 176(2) of the ICC Rules of Procedure and Evidence to ensure that the requests for cooperation and the transmittal are properly made by the Registrar. Scheffer, *supra* note 16, at 533. The United Nations Security Council would be involved in this situation because the Darfur investigation was referred to the ICC by the Security Council itself, under Resolution 1593 (2005). Thus, all Security Council members, including those not party to the ICC, are theoretically obligated to consider requests for cooperation. It will be interesting to follow

how China, a country with significant investments and influence in Sudan, responds to such requests for cooperation. It will also be interesting to examine how the United States, which had taken a negative stance toward the ICC in general throughout the least eight years, responds to the same requests for cooperation. In light of such politically important considerations, it is understandable why ICC judges are reluctant to issue rash arrest warrants under Article 58.

- 29 *See, e.g.*, Decision on Prosecution's Request for Expedited Decision, *supra* note 2, (PTC1 explicitly stated in this decision, responding to the Prosecutor's request to expedite the Application request, that in light of the complexity of the issues involved, it needed time to study the full evidentiary record before it).

INTERNATIONAL CRIMINAL COURT: SITUATION IN DARFUR, THE SUDAN—SUMMARY OF THE
PROSECUTOR'S APPLICATION UNDER ARTICLE 58*
[November 20, 2008]
+Cite as 48 ILM 410 (2009)+

**Cour
Pénale
Internationale**

**International
Criminal
Court**

Original: English

No.: ICC-02/05
Date: 20 November 2008

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka, Judge
Judge Sylvia Steiner, Judge

SITUATION IN DARFUR, THE SUDAN

Public Document
Summary of the Prosecutor's Application under Article 58

Source: Office of the Prosecutor

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REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

1. The Office of the Prosecutor (hereafter the "Prosecution") requests the issuance of warrants of arrest against the individuals mentioned in this Application for the war crimes of violence to life (murder and causing severe injury to peacekeepers) under Art. 8 (2) (c) (i), intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission under Art. 8(2) (e) (iii), and pillaging under Art. 8(2) (e) (v) of the Rome Statute ("Statute"), committed in Darfur on 29 September 2007.

The context

2. The crimes charged in this Application were committed in the context of and associated with an armed conflict of a non international character which has existed in Darfur between the Government of the Sudan and rebel forces from about August 2002 up to the date of the filing of this Application.

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The crimes

3. The crimes charged in this Application focus on an unlawful attack carried out on 29 September 2007 by rebel commanders and their forces in Darfur, the Sudan against the African Union Mission in Sudan (hereafter "AMIS") peacekeeping personnel, installations, material, units and vehicles which were stationed at the Military Group Site (MGS) Haskanita (Sector 8) (hereafter "MGS Haskanita" or "the Camp"), Umm Kadada Locality, North Darfur.

The alleged perpetrators

4. The individuals against whom the arrest warrants are sought were commanders of rebel groups in Darfur that carried out the attack charged in this Application. As commanders, they planned and directed the attack. They commanded forces of around 1,000 men in a convoy of approximately 30 vehicles mounted with heavy weapons to attack AMIS peacekeepers at the MGS Haskanita. The attackers killed twelve (12) peacekeepers and severely wounded eight (8) others. In addition, they destroyed the communications installations, dormitories, vehicles and other materials belonging to AMIS. After the attack, the three commanders personally participated, alongside the joint rebel forces, in pillaging the Camp, and removing property belonging to AMIS including approximately seventeen (17) vehicles, as well as refrigerators, computers, cellular phones, military boots and uniforms, fuel, ammunition and money.

The personnel and property attacked

5. Under the Statute, intentionally directing attacks against personnel and property involved in a peacekeeping mission in accordance with the United Nations Charter and killing of peacekeeping personnel taking no active part in hostilities are war crimes, as long as the personnel and property are entitled to the protection given to civilians and civilian objects under international humanitarian law. AMIS was a peacekeeping mission authorized in accordance with the United Nations Charter, first through UN Security Council Resolution ("UNSCR") 1556 of 30 July 2004 and then through subsequent resolutions. The mandate of AMIS was "to monitor and observe compliance with the Humanitarian Ceasefire Agreement of April 8, 2004 and all such agreements in the future, to assist in the process of confidence building, and to contribute to a secure environment for the delivery of humanitarian relief and, beyond that, the return of IDPs and refugees to their homes, in order to assist in increasing the level of compliance of all Parties with the Humanitarian Ceasefire Agreement and to contribute to the improvement of the security situation throughout Darfur."¹ AMIS personnel were not taking any active part in hostilities before, or at the time of the attack.

The admissibility of the case

6. The Appeals Chamber has ruled that that "[a]n initial determination on the admissibility of a case cannot be made an integral part of the decision on an application for a warrant of arrest for the reason that article 58 (1) of the Statute lists the substantive prerequisites for the issuance of a warrant of arrest exhaustively..." Nonetheless and without prejudice to the above, the Prosecution submits the following observations on both the gravity and complementarity thresholds under the Statute..

7. In assessing the gravity of the crimes charged in this Application, and consistent with the Appeals Chamber ruling that Article 8 Chapeau requirement 'in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes' should not be construed narrowly, the issues of the nature, manner and impact of the attack are critical. In the present case, an attack was intentionally directed at international peacekeepers, 12 of whom were killed, 8 of whom were severely wounded, AMIS facilities were completely destroyed and properties that were needed for effective discharge of its mandate pillaged. AMIS operations were severely disrupted, thus affecting its protective mandated roles with respect to millions of Darfurian civilians in need of humanitarian aid and security. Intentional directing attacks against peacekeeping operations constitute exceptional serious offences which "strike at the very heart of the international legal system established for the purpose of maintaining international peace and security".² Peacekeepers are mandated to protect and attacking them jeopardizes their mandate and puts at risk the very viability and continuation of their operations.³ The African Union ("AU") in a statement issued soon after the attack described "the attack as heinous and cowardly act will not deter the determination and commitment of the AU in bringing about lasting peace and alleviating the suffering of the people in Darfur, including through the early deployment of the African Union- United Nations Hybrid Operation

in Darfur (UNAMID) with enhanced capacity and strength, in accordance with the UNSC resolution 1769". The UN also condemned 'this murderous attack' in a UNSC Presidential statement dated 2 October 2007. As noted in the Preparatory work to the Establishment of an International Criminal Court "attacks [were] committed against persons who represented the international community and protected its interests; [the] attacks [were] in effect directed or committed against the international community....and the international community had a special responsibility to ensure the prosecution and punishment of these crimes."⁴ Moreover, as the International Law Commission commented in relation to such attacks in the context of the 1996 Draft Code of Crimes, such attacks "constitute violent crimes of *exceptionally serious gravity* which have serious consequences not only for the victims, but also for the international community".⁵

8. With regards to complementarity, there are no national proceedings in relation to the case.

The protection of witnesses

9. Victim and witness protection considerations apply to this Application. In fulfillment of its statutory responsibilities, the Office of the Prosecutor has continuously monitored the security of witnesses, and appropriate protective measures have been taken Both the Prosecution and the Victims and Witnesses Unit will continue to monitor and assess the risk to witnesses.

The relief sought

10. In view of the above, and in accordance with Art. 58(1) (b), the Prosecution respectfully requests the issuance of warrants of arrest. However, as there has been public notice of this Application, all concerned commanders of rebel forces in Darfur have the opportunity to express their willingness to voluntarily appear before the Court. Subject to the Pre-Trial Chamber's determination, the Prosecution submits that a summons to appear could be an alternative pursued by the Court if the Court receives information as to the possible voluntary appearance of the individuals.

11. The Prosecution has filed confidentially an unredacted version of this Application for the Chamber's review.

Luis Moreno-Ocampo
Prosecutor

Dated this 20th day of November 2008
The Hague, Netherlands

ENDNOTES

- 1 The AMIS mandate further indicates: "In order to meet these objectives, the following tasks were delineated...to monitor and verify the provision of security for returning IDPs and in the vicinity of existing IDP camps; to monitor and verify the cessation of all hostile acts by all the Parties; to monitor and verify hostile militia activities against the population; to monitor and verify efforts of the GoS to disarm Government controlled militias; to investigate and report about allegations of violations of the Humanitarian Ceasefire Agreement; to protect civilians whom it encounters under imminent threat and in the Immediate vicinity, within resources and capability, it being understood that the protection of the civilian population is the responsibility of the GoS; to protect both static and mobile humanitarian operations under imminent threat and in the immediate vicinity, within capabilities; to provide visible military presence by patrolling and by the establishment of temporary outposts in order to deter uncontrolled armed groups from committing hostile acts against the population; to assist in the development of proactive public confidence-building measures; to establish and maintain contact with the Sudanese police authorities; to establish and maintain contact with community leaders to receive complaints or seek advice on the issues of concerns; to observe, monitor and report the effective service delivery of the local police; and to investigate and report all matters of police non-compliance with the Humanitarian Ceasefire Agreement."
- 2 A/51/10 (1996), ILC Commentary to Art. 19, Draft Code of Crimes.
- 3 ILC Commentary.
- 4 Summary of the Proceedings of the Preparatory Committee, A/AC.249/1, 7 May 1996.
- 5 A/51/10 (1996), ILC Commentary to Art 19, Draft Code of Crimes