



United Nations Mission In Sudan
UNMIS

PRESS CONFERENCE

Mr. Jan Pronk Presiding
Press Room - April 3, 2005

Following is a near-verbatim transcript of the press conference of 3 April 2005 by the SRSG, Mr. Jan Pronk:

Radhia

Good evening all and welcome ladies and gentlemen, representatives of the press. We would especially like to welcome this kind gathering of the best pens in the Sudanese press. We welcome all of them to this meeting with SRSG Jan Pronk who, as is usual of him, would like to have direct contact with the Sudanese media especially in the wake of developments that concern Sudanese public opinion in general and also concern the creators and those who influence public opinion in the Sudan in this important stage in the history of the Sudan as a whole and in the history of the presence of the UN in the Sudan.

You do, of course, know Jan Pronk. For those who have not met him in person before, he is the one seated on my right. On my left is Mr. Hansjoerg Strohmayer, the Chief of Staff in the Mission who is also the Legal Adviser to the Mission.

Welcome once again and without much ado, I would like to give the floor to Mr. Jan Pronk who will be briefing you on the latest developments and the recent resolutions issued by the Security Council.

..... Mr. Pronk.

Pronk

Thank you for the opportunity. I was with you about a week ago when we were discussing, in particular, the draft resolution in which the mandate for the UN has been laid down on the basis of the peace agreement.

Last week two other resolutions have been passed and I would like to say a few words about them in terms of the political significance and Mr. Strohmayer, who is here in his capacity as acting OIC Chief Legal Affairs of the UN at the moment, who, by the way, has been involved in the past in his previous capacities in the set up of the ICC – in the negotiations. He will give some introductory legal comments and then discussions. Political questions can then be put to me and legal questions to the Legal Officer.

There were two other resolutions. The first resolution, 1591, which is the resolution which was adopted a couple of days ago on the 29th of March, which is being called the Resolution on the Measures. It is a long resolution. I will make only three comments on that resolution.

First; please understand that this resolution is not a resolution against Sudan nor is it a resolution against the GoS. It is a resolution on measures not against the GoS. You know it is the outcome of a long discussion, a long negotiation in the Security Council. The outcome is a resolution on measures against specific persons in Sudan. Not all persons, not the government. It is very important to bear that in mind. Which persons? You will see that in specific paragraphs of the resolution in particular in paragraph 3C where you find a text: “persons who impede the peace process, persons who constitute a threat to stability in Darfur and the region, persons who commit violations of International Humanitarian or Human Rights Law or other atrocities, persons who violate the measures implemented by member-states in accordance with a previous resolution ...” so it is against specific groups of persons. Categories have been mentioned here. That is number one.

Number two; measures have been mentioned mainly travel bans to such persons and with regards to the freezing their financial and economic assets – economic and mobility measures.

Next comment; in this resolution, you also find two paragraphs which are related to military activities. Firstly, the government of Sudan will have to request the Security Council if it wants to move military personnel and equipment into Darfur and secondly; the Security Council demands that the GoS will refrain from hostile military flights over and above Sudan.

That is the resolution. It is a resolution that is the outcome of long talks. In my view it is a very fair resolution. It makes a distinction between those people in Sudan and those members of the GoS who are working towards peace and who are not carrying out atrocities and not violating principles of international human rights and the others. It is very specific, it is fair, it is just and equitable.

Politically it is important also because what is being said here with regards the military dimensions is a very strong argument in the discussions with the SLA. They can not say anymore that “we will not be able to disclose our military positions in the field because we are afraid otherwise that we will be attacked by air”. No hostile military flights – the Security Council demands that. It is a contribution to the implementation of the ceasefire agreement.

The second resolution – Resolution 1593, last Thursday night, Friday morning. This is a resolution on the basis of the report of the Commission of Inquiry. And the report of the Commission of Inquiry is well known and has been published. The Security Council now has decided that, without any country voting against that decision – no veto and no vote against by a country that does not have a right to veto – that the report is going to be handed over to the ICC and that the whole issue of violation of human rights is an issue to be dealt with internationally by the ICC. There were a number of abstentions for different reasons and the different reasons together reflect

the different political views in the world with regards to the ICC but do not reflect different views with regard to Sudan.

So you can say that as far as Sudan is concerned, politically, there was a consensus. Abstentions were based on different considerations. What does that mean? It does mean – and it is important – that the whole issue of impunity and bringing perpetrators of human rights violations to justice is out of the hands of the politicians and is now a matter of justice, of legal affairs, only. No country in the world, also not countries which always have criticized the GoS, is in a position to influence the ICC. It is independent above all parties, impartial, like a good institutional setup, in legal terms, ought to be. There is no political pressure anymore. It is in the hands now of that independent International Criminal Court.

With due legal process, which means investigation, the possibility to consult the government here in full freedom, which means that there will be lawyers to the defense; a due process, completely, like an international legal process ought to be – better than in many individual countries in the world (not to name individual countries).

Those people who are, at a certain moment, called for to come to court will be in a process which is completely fair, independent and impartial, with all the legal assurances also with regards to all the rights of the persons concerned. That is officially part of the Charter of the ICC and is also to be seen in the present practice of the ICC in some particular places – for instance Bosnia, Serbia and Croatia – outside the realm of politics.

It will take time. There is no rush and there are procedures which Mr. Strohmayer who is the expert will say something about.

I finish my introductory comment with one statement: I advise the GoS, not only in this press conference because I also have my discussions with the members of GoS, to work together with the ICC. Why? Firstly because it is the highest international organ on this issue in the world. Secondly it is the result of a decision of the highest political organ in the world – the Security Council. Thirdly, politically it is understandable; it is a consensus in the Security Council. As I did say: there were no countries abstaining on different grounds related to Sudan. And fourthly, it is now something which provides Sudanese in such a situation with all the rights they have in such an international situation.

Bringing it to the ICC makes it possible to continue all the other political issues for instance political negotiations on Darfur in a regular, political stream, without being burdened by views of people with regards to impunity and what has to be done with the perpetrators. SLA which has said that they only want to return to the negotiations table if really it would be clear that the Security Council is certainly serious about the recommendations of the Commission of Inquiry. They now have its response – they could go no further. They have now to go to the negotiations table because now it is out of political hands. They will have to do something and I, in this press conference and also in my contacts with them, will urge them because their fear that they will not be taken seriously has been answered. It is over and they now have to talk and I will

urge them to do so when we go back to Asmara and also in our contacts with their representatives on the ground in the next couple of days.

Finally, the GoS has all the opportunity to continue its own process. I read the statement by the State Minister for Foreign Affairs that this is undermining the legal procedures in the country. That is not a good reading of the procedures. This is not undermining the legal procedures. The legal procedures in the country can just continue. It is complimenting legal procedures. It is not even a substitute. If there are legal procedures in the country really aiming at putting an end to the impunity of perpetrators, there is no reason for the ICC to step in for the persons concerned. It is a supplement or a compliment, it is an addition. It is not undermining the procedures of a sovereign, independent state. Sudan is a sovereign independent state which has been recognized explicitly in the text of these resolutions.

These are my political comments, Mr. Strohmayer can go into the legal details.

Strohmayer

Let us start with the last remark of the SRSB about the role of the ICC. You know that the ICC was based on the statute created in Rome in 1998 and entered into force in 2002 based on 50 ratifications of different member-states.

As of today, the number of ratifications is higher; therefore number of member-states who support this court has increased. The ICC has always been intended as an extension of the national judiciary. This means that the first opportunity at trying perpetrators is with the judiciary of the national states at issue. In our case this means that if Sudan was to try perpetrators of acts committed in Darfur, there is no reason for the ICC to step in. Even now, the referral of the Security Council to the Prosecutor of the ICC has taken place, this is still unchanged. Sudan can still, by prosecuting and eventually trying those indicted or those who might be indicted for crimes, avoid any proceedings before the ICC. The only caveat to this is there are two tests. The prosecution carried out by the national state, Sudan in this case, must not be seen as shielding those perpetrators. This means that if you initiate proceedings and then everybody is found not guilty based on questionable evidence, that might be seen by the court as shielding and then the court might step in again. But you can see how the court simply functions, as the SRSB said, as a complimentary judicial organ to the national judiciary. The first step and responsibility is in fact to the national judiciary and only then would the ICC step in.

The proceedings are rather complex. They are complex in order to fully safeguard the interests of the national state and its citizens. Right now, the Security Council has referred the situation to the Prosecutor. What has actually happened is that these are not indictments. The findings, the report of the Commission of Enquiry, including the names of the 51 individuals, will be submitted to the Prosecutor. That does not mean that the day after, the Prosecutor will issue an indictment – in fact that is a very complex process in itself. This is seen as information. The Prosecutor will now evaluate this information. If the Prosecutor decides that based on the findings of the Commission of Inquiry and potentially other information that are publicly available to the Prosecutor from websites and so on, there are grounds to believe that an investigation will be warranted, then the Prosecutor would request the Pre-Trial

chamber (a chamber of three judges) to authorize an investigation. That means that an official investigation has not started yet with the referral of the Security Council. It will only start once the Prosecutor has decided that there are grounds, based on the information available, to believe that criminal acts have been committed by certain individuals and that a formal investigation should be opened.

In the course of this investigation, the Prosecutor has to carry out several tests. The two most important ones are: is the evidence that the Prosecutor reviews is actually sufficient? The Prosecutor is not only here to indict. The Prosecutor model is modeled after the civil law system where a Prosecutor is not a party to the proceedings but is an independent organ of the court. The Prosecutor can review evidence and decide in favor or against an individual. That means the Prosecutor can also decide to dismiss charges in favor of a person against whom he was given information in the first place.

The second important test for the Prosecutor is admissibility or inadmissibility. A case is only admissible (and that leads me to my first comment) once a country has shown its inability or unwillingness to prosecute the person itself. So, again my comments, if Sudan will try and steps in at any given time to try these individuals in a credible way itself, the case would be inadmissible and the Prosecutor will not be able to complete investigations. If at the end of this investigation – and this may be a long process, I won't be able to tell you how long experiences from the Yugoslavia tribunal have shown that investigations to build a credible case can last several years, between one, two, three years. So this is nothing that will happen tomorrow.

If the Prosecutor sees that a case is sufficient for indictment, the Prosecutor, again, would not issue the indictment but will present the Pre-Trial Chamber to conduct the hearing. The Pre-trial Chamber would then conduct a hearing, hear the different parties and their arguments and, again, the state of Sudan or any other party will be able to make interventions on behalf of its citizens.

Only when the Pre-trial Chambers see that the findings of the Prosecutor in fact warrant an indictment, the Pre-trial Chamber can agree and confirm the charges and issue the indictment. It can also go one step further – the Pre-trial Chamber can issue an arrest warrant.

Only once these proceedings have been completed and that would complete the investigations, only then would a trial commence at a later stage. Of course several obligations on how to cooperate with the court – obligations for the parties as the Security Council resolution spelt out. And in fact the Security Council resolution does not only spell out the obligations of the GoS but of all parties who are involved in the conflict in Darfur. The procedures equally apply to other parties to that conflict.

I think I have outlined the procedures roughly and perhaps my last word is that even if a trial chamber were to find an accused guilty and eventually convict a person, there is still a proceeding to file an appeal and an entire appeal proceeding will be conducted. This is just to emphasize what the SRSG highlighted: Full due process, all safeguards and guarantees enshrined in international conventions and treaties will be fully safeguarded, there will be extensive due process given to any defendant including at any stage of the proceedings to challenge any warrant, arrest warrant and so on.

That is probably my last comment. In case the Pre-trial Chamber were to issue an arrest warrant for any accused person, the accused will immediately be able to launch an appeal or a challenge to the national authorities of the state that have been requested to put the indicted into custody. Assuming that the national would still be in the territory of the Sudan, such a request would be issued to Sudan. The request for an arrest warrant itself can be challenged before authorities in Sudan by the indicted person.

Radhia

Thank you Mr. Strohmayer, Mr. Pronk. We are now open for your questions ladies and gentlemen.

I have a list of representatives of the press. We will start with Reuters, Al-Ayam, AlAnbaa, Akhbar Alyoum, Mr. Osman el-Mirghani from Alrai Alaam whom we welcome very much, then AlJazeera.

Let's start with Reuters.

Q: Sudan has said that it rejects the possibility of sending any Sudanese outside the country for trial. Is there any possibility for compromise with the ICC convening within Sudan?

What would it mean for Sudan if it doesn't cooperate with the ICC?

And a technical question which may be Hansjoerg might be able to answer which is: once the ICC Prosecutor takes a documentation of the Commission of Inquiry, does that list and all that information remain confidential?

Pronk

ICC can take any decisions it wants to take on when and where to have the trial. I do not expect that the ICC will have the trial outside The Hague. It can take any decision but it will be wise anyway for the government to get into discussions with the ICC to understand all the procedures and the ICC will be more than willing to explain all these procedures.

As I did say, I do advise the GoS to cooperate and I have already mentioned why and will not repeat the reasons why it will be wise for the government. I think I will be quite convincing.

If the GoS will not cooperate with the ICC then the Security Council will discuss that and then it will be up to the Security Council to take decisions. There are no automatic compliments from the Security Council in this particular case.

Strohmayer

From the legal point of view, theoretically the ICC statute does provide for the possibility of a trial in a place different from the seat of the court. The general is that

unless the court decides to hold a hearing elsewhere, it will be in The Hague in the seat of the court.

On your second question, that is a matter for the Prosecutor himself to decide. The Prosecutor has the right to not disclose any information passed over to him whether it be from the Commission of Inquiry or from any other source. He has that right and he will exercise it as he sees fit.

Q: This is the first case, I think, that such a resolution is being made by the Security Council on Sudanese to be tried by the ICC. The government used to say that if this resolution could be revised to be changed to a mixed court or other court of law before Sudanese judges or so – this is my first comment. Is there any room for this resolution to be revised to be changed to a mixed court or so?

The other thing is about the arrest warrant. You were talking about an arrest warrant under Sudanese territory. What if the accused person is outside the Sudan what are the measures involved?

Pronk

Formally, always don't expect that as it is the outcome of long discussions. The GoS made a statement in the Security Council, I understand, that decision has now been taken. The Sudan can always raise questions in the General Assembly, can always approach the Security Council but politically the outcome is the outcome as it is. So it is no longer in the hands of the Security Council but in the hands of the court.

Again I think it would not be wise for the government to start to become in a political process now that indeed it has become a purely legal process.

Strohmayer

Just a compliment. On the cooperation side, it should be recalled that Sudan actually is a signatory to the statute of the ICC. Sudan has not yet ratified the statute but is a signatory and signed on 8th September 2000 and it is an accepted doctrine that once a country is a signatory, while you do not have full obligations of the statute, you do have certain cooperation obligations. So it is expected that countries, as lawyers would say, show friendly behavior towards the Court and cooperate with the requests of the Court and as a signatory, we would think that Sudan would cooperate.

Secondly; as I emphasized before, the main opportunity – we don't have to think about hybrid tribunal to anything else – Sudan has the opportunity to try any person who might be charged, or eventually indicted before its own national courts in a credible way and, thereby, avoid any action on behalf of the ICC. This is one thing. This is not an external court, this is not an international separate entity. It is, in a way, an extension of the national judiciary. Only once Sudan fails to deal with these matters themselves in its own courts, would the ICC step in.

The last question on the arrest warrant – if I understood you correctly – if a Sudanese citizen is outside Sudan (in a third state), the Sudanese citizen could bring the same challenges to the arrest warrant. If an arrest warrant is issued by the Pre-trial

Chamber, the court has the opportunity to use Interpol to cooperate with the national authorities and exercise this arrest warrant. That is what we call the “Custodial State” – the state in whose territory the indictee or the accused person lives or is located – would have to hear a challenge to this arrest warrant. Thank you.

Q: Sudan has not been requested to cooperate with the resolution. The resolution was issued by a United Nations organization .. the resolution violates some provisions of the ICC treaty.

Sudan wishes to, and indeed has, launched legal proceedings against the suspects of the Darfur crimes. The ICC treaty states that the ICC would only step in once a state declares its inability to try individuals or if it shows unwillingness to do so. The government has started proceedings so why then has the issue been referred to the ICC?

Pronk

I don't think the GoS has already taken a position. I have seen some statements and that is always the case but the Sudanese official position has not been made up, publicly.

I know that there is a meeting of the Council of Ministers today and I had discussions before the Council of Ministers with the Minister of Foreign Affairs and I gave some explanations on procedures as I indeed requested, following the statement by the Secretary-General of the United Nations, for cooperation now that the decision has been made. But the Council of Ministers has still to take or publish a decision and we wait until that decision is taken.

My advice is to cooperate for the reasons that I made. It is good for you.

On your second question, I didn't do anything of course. It is the members of the Security Council who take the decisions. The Security Council decided to send the Commission of Inquiry. It was not the decision of the Secretary-General of the UN or the United Nations but was a decision by the country's of the Security Council. And the report of that Commission was given, through the Secretary-General, to the Security Council. The UN does not take any decision. I did say so also explicitly in previous press conferences. The Security Council – countries in the Security Council – took the decision on what to do with the report. Why this decision was taken, you have to ask the members of the Security Council. But you can read in their statements made (all of them have made public statements after the adoption). I would like to advise you to read all their public statements for different reasons. Most of them are saying that these atrocities which have been carried out, also according to the Commission of Inquiry, do constitute a major violation of international, humanitarian and human rights law and for that reason we have indeed established that special court which is a step forward in the establishment of the international community organizations in the 1990s. So it is logical to do so.

But again, as it was made very clear by Mr Strohmayer, not to undermine or substitute national process but to compliment it. So the GoS can do what it wants. It can also continue what it did start or what it published that it has started.

Allow me one political comment: the GoS could have started earlier as I did make very clear in all my statements upon my arrival in August last year, please start a process. And I made it very clear in many of my reports to the Security Council that, in my view, the main perpetrators were not being brought to justice and in my January report when the Commission of Inquiry's report had already been presented to the Security Council, I said very clearly that it would be very wise if the GoS, before any decision could be taken by the Security Council or a referral to any court, would now take a step to seriously start a legal procedure vis-à-vis the main perpetrators. The GoS did not do it. It remains to be seen what might have been the reaction of the Security Council if the GoS had taken its chance which it deliberately did not do. It had all the possibilities. And also, in that respect, I think it is very clear why members of the Security Council decided "let us in anyway have a guarantee that there would be due international process if there is not due national process". But still the chance for due national process can take place is there a hundred percent.

Strohmayer

Just a point that I think it is important to mention: The ICC is not an organ of the UN and as such is not a sub-organ of the Security Council. The ICC is an independent organ from any other international organization including from the UN. It has a cooperation agreement with the UN as it has with others but it is not a UN organ and, as such, we will be considered any other outside party as would be the government or others.

Q: The USA is in the same position as Sudan vis-à-vis the Rome Statute. What is the legal view of exempting nationals of the USA and including those of the Sudan?

Strohmayer

I will give you a very legal answer.

This is a resolution that the Security Council members have adopted and they have come to a compromise as you know and one of the provisions provides for an exemption of, not one state, of states who are not party to the Rome Statute. I don't know how many but I told you it is more than 100 states who are by this time member-states and have ratified the statute. The USA is one of those countries that has not yet ratified the statute yet and, as such, there is an exemption for every member state who is not a party to the Rome Statute that gives nationals to be exempt from the jurisdiction of the ICC.

Again that is not for me to comment upon. That is left to the wisdom of the Security Council.

Q: It is not clear to me the point about how the national court will shield the international court. Do you mean it will do that only if it found one or more than one of them guilty?

Strohmayer

We are not into collective justice. Justice is always individual and that means that we look at every single individual case.

Let us assume that we have a case in which the Prosecutor right now will find, after evaluating the report of the Commission of Inquiry and the different information that he may obtain, may find that there are sufficient grounds for an investigation. And let us assume that the Pre-trial Chamber finds that there is sufficient ground. The government or the national independent judicial authorities of Sudan could bring a case against this specific individual in the court of Sudan with the prosecutor and so on. If this proceeding were to lead to the acquittal of the individual and if the prosecutor or the international community were to review that and would have the impression that the acquittal was for frivolous reason, say that despite the evidence in the face of everybody, despite statements by many witnesses, people simply disregard the witness statements. They don't say the witness is not credible but simply don't take the witness' statement into account and acquit the person. If you have strong assumptions that it is simply to release the person, then it will be seen that the national judicial authorities of the Sudan is unwilling to prosecute the person and bring the person to a credible trial.

In this case, in fact, prosecution and investigation could continue and eventually lead to an indictment and to a trial. But if the national authorities were to indict this person and try him based on credible information and say it was not an active act, it was only aiding and affecting a minor act, and based on this it could be one and a half or two years – something like this. This is a case where most likely the conviction or the judgment found by the national authorities in Sudan would stand. This is what the ICC generally wants to promote. It does not want the international community to take over justice. The intention of the ICC is to provide an incentive to all national judicial systems to live up to its primary responsibilities to prosecute and try its own citizens. That is the principle.

Q: When will the international community make public the list of suspects to enable the government cooperate?

What are the mechanisms for the implementation of the resolution that dictates an assets freeze for the suspects and the flight ban?

Article 87 says the Chief Prosecutor has the right not to institute measures should he deem that such action will jeopardize the interests of the victim and does not realize the interests of the parties. Could the Security Council accept such an opinion by the Prosecutor to decline an indictment?

Pronk

The Prosecutor will take the case on his own on whether or not to disclose the list and when. He may even decide not to do so. He can decide that he only comes with several names because he may come to the conclusion that the mentioning of some of the names on that list is not justified on the basis of his own investigations and that it is better not to mention the names.

So you will have an independent investigation. But I may add that there could be, on the basis of further evidence, other names that are not in the list of 51. These could also be brought to the attention of the Prosecutor and he may also carry out an investigation and then those names also can be brought. He takes his own decisions, as was made clear by Mr. Strohmayer, not under any political pressure. He may have to report, as requested – as invited – to the Security Council but that is only an invitation and he only will report on the cooperation which he will receive from countries and not on individual cases.

I think that is what I would like to say in response to your question and Mr. Strohmayer will undoubtedly have something to add.

Strohmayer

On your second question regarding the motion of the Prosecutor to decline an indictment for reasons of justice; in fact there is a provision under the statute that emphasizes the due course and the correct procedures in taking to court all interests of a state and the victim that this court follows. That is Article 53 (2-C) that says, “a prosecution that is not in the interest of justice, taking into account all circumstances including the gravity of the crime and so on, could be dismissed”. The Prosecutor can make such a motion but just as the Prosecutor can not himself just decide to indict but needs the approval of the Pre-trial Chamber of judges, also a dismissal on grounds of incompatibility with the interests of justice would go to the Pre-trial Chamber and the Pre-trial Chamber would review such a decision.

So it is not entirely the prosecutor’s decision alone. A chamber of judges will review this, in effect at the end of those procedures, would come to the decision that indeed it is not in the interest of justice to pursue this indictment.

One important factor is the gravity of crime. In a conflict we have many, many perpetrators on different levels. One may be involved in simply passing information to a person that eventually carried out a crime. That may be considered, although it leads to an act of a certain gravity, but a relatively mild act given the many other perpetrators that the conflict produces. In those cases, for instance, it could not be in the interest of justice, although one could find a person guilty to pursue before the ICC trial against this individual.

Again in the gravity of the justice, we are dealing with the three core crimes in International law: genocide, war crimes and crimes against humanity. The most severe crimes that the world community since early 20th century, in fact in the late 19th century, has stipulated, is very unlikely that in the interest of justice, an individual against whom the Prosecutor may think there is sufficient evidence to have committed acts of crimes against humanity, that that person will be released and those charges will be dismissed in the interest of justice.

My last point to emphasize what SRSR Pronk just said, the Prosecutor, under Article 54 paragraph 3(e), has the right not to disclose any information whatever it may be, be it those 51 names or any other information, for as long as he deems in the interest of the proceedings.

Q: Do you think that there is a possibility that the attitude towards the UN here would change now, in the light of this decision, on the ground like in terms of more hostility through members of the Sudanese security who perhaps will be less willing to cooperate with the United Nations?

Secondly; the question of who the ICC may collar up. If for example very senior current members of the Sudanese government were included on that list, is there any provision that they may decide not to collar them on the basis that it may destabilize the country?

Pronk

On your first question, that would not be a ground for a change in position on the basis of such important considerations as there have been mass violations of human rights. And I am calling of course on all parties to cooperate. I am calling for the government to cooperate and it has the duty to protect the UN here; moreover we are here on the request of the government and the other parties. Also the pre-mission and now the mission here is on their request and they have the duty to protect the UN.

But let us not go into such considerations. We have no reason whatsoever to expect at the moment that the position of the government which has been very fair towards the UN and other international personnel will change on the basis of a decision of the Security Council which is expecting, itself also being a member of the UN and also having and still being a signatory itself, the GoS to the Rome treaty for which I would like to commend the GoS.

Two; it is completely up to the Prosecutor and out of the hands of the Security Council and out of the hands of those who take political decisions. It is up to the Prosecutor.

Q: But legally does he have flexibility to remain ...

Pronk

He has any flexibility himself to take the decision not to disclose or to continue his studies and he may do so for quite some time. That has happened also with the predecessor of the ICC which is the Yugoslavia tribunal that did take quite some time before they indicted members

Q: So in theory there is a possibility for some sort of horse-trading to go on with the government ...

Pronk

In theory there is the possibility that the independent investigations of the prosecutor may take some time for instance a year or two. I would totally dissociate myself from your terminology that in theory for the highest legal organ in the world, given these trials, that there is the possibility of "horse-trading". That is out of the question. Independent decisions of the Prosecutor.

Q: Can you say that Resolution 1591 and 1593 has affected UN operations and the relations with government negatively or positively?

Pronk

The relations are good and I have not seen the decision yet of the Council of Ministers. As far as the UN itself is concerned, we stand ready to cooperate fully with the government now, tomorrow and always.

At the same time, the government is a government of a sovereign country and has the sovereign right to take all decisions within, of course, the limits of International Law.

Q: Despite Resolution 1593, the last press release from the WFP states that there still are attacks and the situation is very bad. They have many trucks which have been attacked.

Pronk

There are constant attacks on trucks reported. The attacks are taking place by people who do not say to which party they belong. The government has helped us to break forward a convoy of WFP trucks which was stalled somewhere. They helped us with the military. It was important because these convoys come here in order to help Sudanese citizens.

I have no reason to believe that the government or the military are attacking the convoys. On the contrary, I have reason to believe that quite a number of groups who have split themselves away from any group to which they officially did belong are carrying out such attacks. We are very concerned about it. We requested the government to police it in such a way that it does not take place and we requested the AU to carry out patrols along all these roads which safeguard the humanitarian transports.

Q: In very simple language, if the government seriously tried the violations, then there would be no need for ICC intervention. Is this correct?

Pronk

That is correct.

Radhia

Time is running short and the list of speakers that I read to you is actually the final. Please do bear with us also to make your questions short if possible and we will try to make our answers short as well.

Q: US citizens are exempted according to Resolution 1593 but it is not stated clearly where and how they will be tried.

My second question is: if it happens that one or some of the 51 suspects is of US nationality, what is the case – should he be tried or not?

Strohmayer

Let me start with your second question because it is easy: if one of the suspects has dual Sudanese and US citizenship. Such a person could choose to be tried by the US judicial system.

I am not sure whether I did understand the first question but I can only repeat what I said before. It is not up to me to give you my personal opinion on operative paragraph 6 of the resolution which is the exemption which does not specify that this is an exemption for US citizens. It is for those citizens of states who are not party to the Rome Treaty of which the US happens to be one. But that is not a decision of the UN system or the UN mission here. This is a decision that the Security Council member-states have taken. This is what it is. We will have to live with this, the ICC will have to live with this and I don't have anything further comment on that.

Q: I actually have two questions but before proceeding to my question there is a point that needs clarification. I do not know whether the USA is going to contribute troops to the peacekeeping mission in Sudan. The US has made it clear that none of its forces participating in any peacekeeping mission will be prosecuted. If that is the case, does it not mean that once they participate in the peace operations in Sudan, will this not contradict the zero-tolerance which will be based on penalties against any atrocities?

The UN had been saying that what is happening in Darfur is a serious crime but does not amount to genocide. This is a term that in fact I can not understand. What actually is the difference between war crimes and genocide? If there is a difference between these two terms, which of them is appropriate for the ICC?

I have been collecting views from the local Sudanese citizens about this current resolution. Their views were that the UNSC had been intelligent enough to provide the UN mandate for its mission in Sudan and then follow it later by Resolution 1593. Some of them did say that the 10,000 strong UN force to be deployed in Sudan will be used for the arrest of some of these suspects for war crimes in the Sudan. What is your comment on this?

Pronk

First; in principle, all countries are eligible as Troop Contributing Countries and they all have been requested. We have received answers from a number of countries and you know them – I disclosed their names in a previous meeting. The United States is not part of them. The United States also made it clear that they will not in future deliver contingents. I do not exclude that there will be military observers. I want military observers from all countries. They are 750 within the 10,000. The military observers are an art.

So far, by the way, there are no United States military observers in that group but I do not exclude that that may be the case in the next couple of years. I don't think it is probable but of course it is not to be excluded.

Second; the dating of the specific resolution is not a matter of political tactics. It is a result of internal discussions in the Security Council and you all know why. It is

because it was a difficult discussion between the Europeans and the United States not on Sudan, not on the mandate, but only on the question which you were also alluding to – some possible formulation with regard to exclusion of Americans. He will mention that in more legal terms. That was the only reason.

Secondly, the United Nations Peace Support Force is a force with a very specific mandate in that resolution. It will therefore not have nor get the mandate to do so. That is never the task of a United Nations peace support operation. By the way, do not expect that foreign militaries are coming into a sovereign country to arrest people. One of the preamble of paragraphs is a paragraph on the sovereignty of the nation. So the country will be requested to collaborate and that could take different forms. That can take the form, for instance like is very often the case so far, that the country's governments will request the persons concerned to go to The Hague – that is will try to convince them to go to The Hague. That has happened in the Yugoslavia tribunal. But sometimes the government has brought somebody. Very often, the government is requested, with some convincing power, to do so.

I think these are the answers to your political questions.

Strohmayer

Look, I know that you want me to say something that I am not going to say on the exemption clause so, as I said before, I will leave the conclusions to you. But just to make it very clear, whatever you may think about the exemption clause, the exemption clause also says very clearly and precisely that those nationals who are exempt shall be subject to the jurisdiction of that contributing state. So the United States or other signatories or non-state parties to the Rome Statute have not given themselves immunity from any proceedings. That is the example that I gave you before. A United States citizen who has committed acts would be tried by the United States judicial system and I think there is no doubt among us that this is one of the most advanced judicial systems in the world. It is not that United States, as for this Security Council resolution, has given itself or its citizens immunity from any prosecution. And if you remember what I said at the beginning, ideally speaking, the ICC is only an extension. It only comes in once the national judiciaries have failed to prosecute people just as in the case of Sudan. If Sudan prosecuted its nationals who have committed acts, there is no need for the ICC to come in.

As much as the United States acts and were to prosecute potential perpetrators, that is justice done. There is no need and there wouldn't be any need for the ICC. That is in answer to your first question.

Your second question, if I understood it correctly, on what crime. The Statute has so-called "Core Crimes", each of them with a whole list of sub-clauses. We have Genocide, Crimes Against Humanity and War Crimes.

War Crimes are grave acts committed in a state of war. That is an act of conflict between warring parties. There are certain indications for when to declare something a war.

Crimes Against Humanity is a second grave crime which does not require that those crimes be carried out in a state of war. Crime Against Humanity can be carried out even if there is no state of war say during the course of civil unrest (which falls short of war) but it would be systematic and widespread – a pattern of violence. In a systematic and widespread violence, people have been assaulted, killed and so on. These would constitute crimes against humanity.

Genocide is, in a way, as the lawyers would say, *alex specialis*, a special case of two crimes against humanity where those crimes against humanity are so grave and committed with the specific intent of one person or a group of people to extinct, to annihilate an entire ethnic group, nation, population, or part of this. When this special intent comes into play that is when you talk about genocide.

That is the distinction between these crimes.

But the ICC is not created to prosecute murder or the shipping of arms or something like this. It is to prosecute those three most serious crimes under International Law. Which one of these comes into play or is applicable is entirely, again as the SRSB said, a decision of the Prosecutor.

And to be very clear, the report of the Commission of Inquiry is the report of the Commission of Inquiry. It is not a judicial body. It has findings in a short timeframe that it has passed to the Security Council and that will now be passed on to the Prosecutor.

The Prosecutor will review and obtain other pieces of information. If he is comfortable with all the information that he has reviewed to open an investigation eventually leading to an indictment, the Prosecutor is entirely free to make a new determination to determine each individual case not for parts of Darfur but for each and every individual whether this individual has committed an act of war crimes, an act of crimes against humanity or even an act of genocide. If it can be proven that an individual has committed an act with the specific intent to extinct an entire population then that individual case can amount to attempted genocide.

Q: Some believe that resolutions 1591 and 1593 curb the role of the AU in Darfur.

Mr. Pronk said he has urged the armed groups to resume talks. Some say that the issuing of these Security Council resolutions will cause the rebels to hold and wait for the implications to settle in on the ground.

Would these resolutions lead to an improvement in the security and humanitarian situations in Darfur?

Pronk

I did hear you say that it might undermine the mission of the AU – not the United Nations but the AU. I don't see any reason to assume that. Not on the basis of the text of the resolutions where there is very clear reference to the position of the AU. Nor on the basis of what is taking place at the moment with regards the mission of the AU. Neither the sanctions nor the ICC resolutions can be seen in that respect.

Your second question is will it have consequences also for the position of the rebels who may wait until what is happening on the ground. They are part of what is happening on the ground and the international community has to and is telling them, “you have to negotiate; stop fighting; disclose your positions; there is no reason any more not to do so. There is no reason any more to fight, there is no reason any more to express your doubts with regards to the seriousness of the Security Council given the report of the Commission of Inquiry. You don’t have any reason any more not to negotiate”. And I made it clear in my report that the government, anyway, is willing to talk and I believe that. In my discussions with the rebels, I and many are at the moment pushing them to talk and may be such talk can really and could start in April. That is on your second question.

Did you have a third question?

Radhia

Do you expect an impact on the humanitarian and security situation on the ground?

Pronk

No, I do not wish to expect that because we have a good relation with the government and I did answer that already. The government has the duty to protect us so I do not expect that.

As a matter of fact, to a great extent, of course there are misunderstandings. If people read well what has now been decided, they can only come to the conclusion that this is just and fair in all directions and also in the direction of Sudanese, the GoS.

Let me also add one other comment. The Prosecutor may take his own decisions. He could also come to the conclusions on the basis of his findings, that there are people on the other side of the struggle who also would have to be brought to court. There is nothing in the resolution which would prevent that. Moreover, in the sanctions resolution, it is being said that “individual people who are hampering the peace process ...” etc. as I was reading out, could be subject to measures. That of course also implies the possibility for such measures against people on the other side of the circle.

Strohmayer

I could just add one quick thing. I think it is expressed in the Security Council resolution which stated that it applies to the GoS and to all other parties.

Radhia

That is talking about the sanction of course. These would be applied not only to some members of the government but will also cover all other persons from the rebel movements, from outside the rebel movements and even the militias who may be involved in these acts stated by the Security Council.

Q: Mr. Pronk says he advised the GoS to cooperate with the ICC and said that he has entered into discussions on the issue with the GoS on the resolution 1593.

Pronk also believes that the major perpetrators of crimes in Darfur are not being brought to trial. On what basis does Mr. Pronk come up with this view that he brought before the Security Council?

My last question is to Mr. Strohmayer. Sudanese expect the formation of a broad-based national government. Once formed, could these 51 suspects be referred to a special trial?

Pronk

I repeat what I already said earlier: I had a meeting with the Minister of Foreign Affairs.

Number two; don't misquote me. I did say that since August until January when I said something very specific on that issue in my report to the Security Council, the government had the chance also to prosecute the main perpetrators. It had not done so since August until January. I did not say that the government doesn't want to do so – but it is possible. And I advise the government, again, to do so because, that is repeating what we said before, it may end a legal situation whereby the Prosecutor of the ICC comes to the conclusion that it is not necessary for the ICC to take action. But until January, the main perpetrators had not been brought to court.

Radhia

The actual question was what did you talk about with the Minister of Foreign Affairs?

Pronk

I gave him my advice and I, of course, gave him also some information about the specific procedures – because it is also my task to explain what is in the Security Council resolutions.

Strohmayer

I think the SRSG has already answered. As we said before, Sudan can set up any judicial arrangements that it deems necessary and appropriate and that can also be a special court. The objective is to bring perpetrators to justice if justice can be rendered through a special court for Darfur, then so be it. There is no obstacle under the Rome Statute or anywhere else on this.

Again, the objective is to bring perpetrators to justice. If Sudan does this in its own courts in a credible way, there is no need for the ICC, not even the Prosecutor, to pursue the cases further. Whether it is against these 51 individuals or any others.

Radhia

Just a reminder, I only have Khartoum Monitor, UPI, the Sudan Radio and Al-Hayat and that is that.

Please make it short because Mr. Pronk has quite an important commitment to attend to in a very short time.

Q: It has been said that the Sudan signed the Rome Treaty establishing the ICC in order to be granted observer status and follow discussions and proceedings of the court, as such, the Sudan is yet to ratify and the observer status has now been dropped. What is your opinion?

Strohmayer

Your question is about the Sudan being a signatory to the ICC statute. I would like to look at the list, this is from the internet. Sudan, as of the 8th of September 2000, is a signatory of the Rome Statute – it has signed the Rome Statute. It has not ratified it so the Assembly has not transformed it into Sudanese Law. That has not happened.

But you either sign or you don't sign. And if you sign, there are certain assumed responsibilities that come with it. If a state signs the Rome Statute or any other treaty, this state – and that is customary International Law – this state is expected to not interfere with the statute. In fact it is expected to show friendly behavior and that is what I pointed out before.

To my information, I have not seen that a formal withdrawal of this signature status has taken place so I can not comment on that.

Radhia

Actually it was not about this. The question was that apparently the GoS signed the treaty just to enjoy the possibility to be an observer to attend the discussions in the Court.

However and apparently, and that is what you said, since the Court became effective and the treaty entered into force after the required number of ratifications have been assembled, the observer status has been dropped automatically and now Sudan found itself with no observer status and thereby being a signatory does not mean anything for the state of Sudan any more since they can not attend any of the procedures of the Court any more. That was the question.

Strohmayer

Sorry for misunderstanding.

I think the fact that a state has signed the Statute does not mean anything in relation to what status it has under junior trial. The GoS itself, as the SRSG made it clear, will never be a party to the trial. And there is no such thing as being an observer to a trial. You protect your citizens. One protection of your citizens is to make sure that defense counsel is provided, to make sure that the legal challenges that, for example, your

citizen can bring to an arrest warrant of the ICC are dealt with properly in your own courts.

The GoS could file an *amicus couria* – a friend of the courts – briefing in favor of its citizens. We have seen these throughout the trials in the former Yugoslavia where the states of the nationals have of course intervened in this sense on behalf of its national.

But the signatory status itself is not dropped automatically itself with the ratification of the statute. Just imagine the moment everybody signs at one point then people ratify. The ratification is a continuous process. Some states do it very quickly and others take longer. At one point, once you have 60 it enters into force. But that does not mean that those who are still in the middle of the ratification process, from being a signatory to a ratifying party, would all of a sudden be deprived of its signatory status. There is no automaticity to the effect that you just mentioned.

So the point is that Sudan is still a signatory.

Q: Actually, I have a little comment but because of the matter of time, I will give up my chance and write it (the comment) on a piece of paper if that is alright.

Q: The GoS has formed a technical fact-finding committee for Darfur. Why isn't this committee given more time to carry out the legal investigations it has started on the findings in Darfur?

The situation in Darfur is currently in dire need for an end to the fighting. Don't you thing that such resolution may further complicate the situation?

What is the mechanism through which the parties could be brought back to the negotiations table?

You mentioned that the government could start legal proceedings. Will this ease the provisions of the resolution 1593?

Pronk

I can only say that the United Nations did not take any decision. Countries in the Security Council have taken the decision and the timing is to them.

The atrocities took place mainly in 2003 and the beginning of 2004 – that is clear. And the Security Council was a bit late. It started in July. And then we got the Commission of Inquiry and on that basis they took the decision in March which is about 2 years after the atrocities started. There is never a good timing and there is never a bad timing. There are just decisions being taken at a certain moment.

For the rest, I can only add to what I have said already. If the international community could have come earlier with a resolution, for instance a year earlier, perhaps some of the atrocities could have been prevented – I have said that already earlier.

Secondly, if the GoS would have started earlier with a serious consideration in legal terms to put an end to impunity, because the promise made to the Secretary-General

of the United Nations in the meeting leading to the Joint Communiqué in July 2004, then perhaps the Commission of Inquiry would not have been necessary and then the whole thing, perhaps, would not have resulted in this resolution.

But you never know. It is a process of decision-making by countries and all countries, including the GoS, can take its autonomous decision. That is the answer to that particular question. I can't say more than that.

Strohmayer

I think that the national fact-finding committee is a very welcome undertaking and, as I said, the Prosecutor will rely on any information and, as such, the national fact-finding committee can of course easily provide a source of this information to the Prosecutor.

Q: The war still flares on in Darfur and some other atrocities may occur, people responsible may be uncovered and another list may come out of perpetrators in this war. Will this also go through the process of a commission by the Security Council then the Security Council then the ICC or will it be left directly to the jurisdiction of the chief Prosecutor?

Pronk

Now the Security Council, by this resolution, has referred the issue to the ICC. It has decided to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the ICC. That means that everything that is happening in Darfur since 1 July 2002 and also tomorrow, etc., now can be handled, in legal terms, by the Prosecutor. It does not have, firstly, to be investigated by a commission of inquiry, or to be discussed first by the Security Council. So it is also of a prospective character. It may perhaps help as a preventive measure – it is quite possible – and I think they will think twice now there is the ICC, also, as I may hope that that is the case because despite the fact that the number of deaths due to violence in Darfur is lower than in 2003 and the first half of 2002, it is still too high month by month.

Radhia

Thank you, all, for your presence and we hope to see you in our next briefing.

Thank you.

—❖ End ❖—