



# Security Council

Seventieth year

*Provisional*

## 7582<sup>nd</sup> meeting

Tuesday, 15 December 2015, 10.35 a.m.

New York

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*President:* Ms. Power/Mr. Pressman . . . . . (United States of America)

*Members:*

Angola . . . . .	Mr. Lucas
Chad . . . . .	Mr. Cherif
Chile . . . . .	Mr. Barros Melet
China . . . . .	Mr. Zhao Yong
France . . . . .	Mr. Delattre
Jordan . . . . .	Mrs. Kawar
Lithuania . . . . .	Mrs. Jakubonė
Malaysia . . . . .	Mrs. Adnin
New Zealand . . . . .	Mr. Van Bohemen
Nigeria . . . . .	Mr. Sarki
Russian Federation . . . . .	Mr. Zagaynov
Spain . . . . .	Mr. González de Linares Palou
United Kingdom of Great Britain and Northern Ireland . . . . .	Ms. Mulvein
Venezuela (Bolivarian Republic of) . . . . .	Mr. Ramírez Carreño

## Agenda

Reports of the Secretary-General on the Sudan and South Sudan

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15-42787 (E)



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*The meeting was called to order at 10.35 a.m.*

### **Adoption of the agenda**

*The agenda was adopted.*

### **Reports of the Secretary-General on the Sudan and South Sudan**

**The President:** In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representative of the Sudan to participate in this meeting.

In accordance with rule 39 of the Council's provisional rules of procedure, I invite Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, to participate in this meeting.

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

I now give the floor to Prosecutor Bensouda.

**Ms. Bensouda:** Each time I appear before the Security Council to brief its members on judicial developments at the International Criminal Court (ICC) and to update its members on the activities of my Office with respect to the situation in Darfur, I wish I could declare that at last the victims of the protracted and incessant conflict in Darfur will soon see justice and that persons alleged to be responsible for Rome Statute crimes in Darfur will soon be held accountable before the Court. Unfortunately, the reality is that the individuals against whom the ICC arrest warrants have been issued remain at large.

Ten years have elapsed since the Council concluded that the situation in Darfur, Sudan, constituted a threat to international peace and security. It was on that basis that the Council decided to refer the Darfur situation to the Office of the Prosecutor of the Court so that those alleged to be responsible for Rome Statute crimes may be investigated and prosecuted. As recently as 29 June, in resolution 2228 (2015) the Council reiterated yet again, as it has done in so many of its previous resolutions, that the situation in the Sudan constitutes a threat to international peace and security. Starting with resolution 1593 (2005), each of the resolutions adopted by the Council has represented the hope that the victims of grave crimes allegedly committed in Darfur will not be forgotten, that those responsible for their suffering will be held accountable and that peace and tranquillity will return to their lives, families and communities.

I observe with great regret that the adoption of each resolution has, in practical terms, amounted to no more than an empty promise. Year after year, victims' hopes and aspirations for justice and a durable peace have been dashed. Instead, the people of Darfur have continued to endure desolation, alleged gross violations of human rights, indiscriminate killings, mass rape and sexual abuse, while the individuals against whom ICC arrest warrants have been issued and who may be implicated in those crimes continue to evade justice. Countless victims have been demoralized. After all, who can blame them when attaining justice appears so remote, not least because of the absence of adequate follow-up and support from the Council? Their frustration and resignation in the face of inaction must weigh heavily on our collective conscience.

My Office's numerous reports to the Council over the years must offer little, if any, solace to victims of atrocity crimes in Darfur. Despite my repeated requests for the Council to take action with respect to the Sudan's blatant disregard of its obligations, and in violation of this Council's resolutions, my appeals continue to be unheeded. As my Office's reports have indicated, Mr. Al-Bashir is not only a fugitive from justice who continues to travel across international borders, but he also harbours other fugitives and refuses to facilitate their surrender and transfer to the ICC to be tried.

My Office, and indeed the Court as a whole, do not have powers of arrest. Those powers rest with States. In the case of the Sudan, the Council, which referred the situation in Darfur to the ICC, has important responsibilities to ensure that States uphold their obligations. I can only reiterate my appeals to the Council to take appropriate measures within its powers to ensure that all Darfur situation fugitives are apprehended and brought to justice for the sake of the victims.

Today, my message to the victims in Darfur is clear and unequivocal — we shall not stop our work and we shall not despair. My Office remains firmly committed to its legal mandate with respect to Darfur, Sudan. We will also continue our principled approach and will repeatedly call upon the Council to more robustly support our work. Victims of atrocity crimes in Darfur should rest assured that the cases against the Sudan suspects are far from over. Contrary to the misinformed belief that investigations in Darfur have been closed, a team of committed lawyers and investigators from my Office is continuing with its work of interviewing

witnesses, collecting documentary evidence and seeking information from relevant sources. My team is also continuously reviewing the evidence and following leads. In short, notwithstanding the challenges present, we are doing everything we can within our mandate and means. Our resolve to fully meet our mandate vis-à-vis Darfur remains unshaken. Let me be clear that the arrest warrants against all Sudanese fugitives remain in full force and effect, and my Office will continue its efforts to do everything feasible within its powers to press for their arrest and surrender.

The victims of Darfur will no longer find solace in our words. They deserve tangible justice, and they deserve to see that justice is being done. What is required is concrete and joint action by the Council, the States and the Court to achieve real progress. Without arrest and surrender, the Council will not be able to deliver on the promise to hold accountable those alleged to be responsible for committing Rome Statute crimes in Darfur, neither will it be able to facilitate sustainable peace and security in the Sudan.

Whether it be in the former Yugoslavia, Rwanda or Sierra Leone, the Council has repeatedly demonstrated that where there has been widespread commission of atrocity crimes against thousands of victims, peace and reconciliation cannot be fully achieved unless and until those responsible for the crimes are held accountable. The same rationale applies to Darfur. The criminal justice process that commenced with the Court's issuance of arrest warrants against Mr. Al-Bashir and other suspects in the situation must be adequately supported.

I must also emphasize that my Office's ability to effectively and fully discharge the mandate the Council entrusted to it is hampered by lack of resources. The level of investigative activities in Darfur is necessarily a function of capacity and resource constraints. I have stressed similar concerns in various other contexts, including in my most recent briefing (see S/PV.7549) before the Council last month. I take this opportunity to once again recall the provisions of article 115(b) of the Rome Statute in accordance with which funds of the Court may be provided by the United Nations, in particular in relation to the expenses incurred due to referrals by the Council. The situation in Darfur is one such referral, and it is incumbent upon the Council to help support and devise innovative ways of providing the much needed resources for my Office's investigative activities.

Victims of Darfur have been let down for far too long. If I may be so bold, the Council must do more to demonstrate its commitment to Darfur, Sudan. It must confidently play its part in facilitating the arrest of suspects against whom the Court has issued warrants of arrest. It must act concretely on the Court's non-compliance communications. In that regard, I thank the Council members who are tirelessly working to ensure that communications from the Court receive the attention they deserve by the Council. Ultimately, this body must recognize its crucial role vis-à-vis those States, including the Sudan, that have been found to be in non-compliance by the Court and fully assume its responsibilities to advance the objectives of the Rome Statute.

I conclude my remarks this morning by making the following observation. The interplay between the Court and the Council is entrenched in the founding treaty of the ICC, and hence is here to stay. It is reasonable to expect that with time and increased inter-institutional interaction, the burgeoning relations between those two important institutions will develop further and evolve. I encourage regular exchanges with the Council, independent of the situation-related periodic briefings, so that we may jointly brainstorm and address inter-institutional matters regarding how to strengthen the support and working methods of the Council in relation to the ICC, building on a similar and most helpful initiative organized in October 2014 under the presidency of Argentina. More opportunities for dialogue and exchange of views between the Court and the Council will be conducive to generating ideas and practical solutions, enabling the Council to more effectively respond to ICC-related matters.

Ending impunity for the world's most destabilizing and gravest crimes is not the prerogative of one single institution. It is a collective responsibility with humankind as a whole as its beneficiary. The Council's tangible, consistent and principled support for the Court will be an important factor for not only the maintenance of international peace and security, but also the cause of international criminal justice in this new century. Indeed, the former is in many ways contingent on the latter.

As detailed in my report, terrible crimes allegedly continue to be perpetrated in Darfur. Only strong and committed action by the Council and States will stop the commission of grave crimes in Darfur and ensure that the perpetrators of past crimes are held accountable.

History will surely stand witness to the tenacity of our will and ability to deliver on our respective obligations.

**The President:** I thank Prosecutor Bensouda for her briefing and all her important work.

I now give the floor to the members of the Council.

**Ms. Mulvein** (United Kingdom): The United Kingdom thanks the Prosecutor for her twenty-second report to the Security Council and for her briefing today.

The United Kingdom shares the Prosecutor's concern regarding the situation in Darfur and calls on all sides to reach a political solution. In June, in resolution 2228 (2015), the Council was deeply concerned about the continuing deterioration of the security situation, but as the Prosecutor's report notes, there are continued reports of aerial bombardments, inter-tribal clashes, widespread allegations of serious sexual violence against women and gender-based crimes, forced displacement and militant settlers. We are particularly concerned by reports of attacks on civilians by the Rapid Support Forces. Civilians are bearing the brunt and we call on all parties to refrain from violence against civilians and to end abuses and violations of human rights and international humanitarian law.

The United Kingdom is also concerned by reports of abductions and attacks on humanitarian and aid workers and peacekeepers. Such attacks must cease and the perpetrators be held to account. It is also essential to ensure unfettered humanitarian access.

The United Kingdom regrets that the four persons subject to arrest warrants not only remain at large in the Sudan, but also continue to occupy high-ranking positions in the Government of the Sudan. The United Kingdom calls on the Government of the Sudan, which bears primary responsibility for implementing the warrants, to arrest and surrender those individuals to the International Criminal Court (ICC), in accordance with its obligations under resolution 1593 (2005).

The United Kingdom is also disappointed that President Al-Bashir continues to travel regularly across international borders to States both in Africa and beyond. We call on all States, whether or not they are ICC States parties, to cooperate fully with the Court in respect to President Al-Bashir and all Sudanese persons against whom arrest warrants are in force. States parties, of course, have a legal obligation to cooperate under the Rome Statute. In that respect, we note the

ongoing judicial proceedings in South Africa and the Court regarding the events surrounding President Al-Bashir's attendance at the African Union summit in June and the Pre-Trial Chamber's request for South Africa to submit its views for the purpose of the ICC proceedings. But it is important that all States support the implementation of resolution 1593 (2005).

The United Kingdom regrets the lack of response from the Sudan on the execution of the arrest warrant against Mr. Banda, and we note the subsequent non-compliance decision, dated 19 November 2015, which will be transmitted to the Council. The fact that that is the eleventh finding of non-cooperation communicated to the Council, and the fourth in respect to the Sudan, is extremely concerning. We urge the Council to take effective follow-up action in relation to non-cooperation so as to ensure that the Court is able to fulfil the mandate that we have given it to refer the situation in Darfur.

The United Kingdom welcomes the Prosecutor's affirmation that, despite those difficulties, her Office has not abandoned its investigations and continues to expend all efforts to obtain the necessary assistance from States to execute the outstanding warrants and investigate alleged crimes committed in Darfur. We welcome the various investigative steps taken by the lawyers and investigators assigned to the Darfur cases and the monitoring of allegations of ongoing crimes. While recognizing the Court's resource constraints — which, in part, reflect the resource constraints of States parties — the United Kingdom urges the Court to continue its work in improving the efficiency and effectiveness of judicial proceedings in order to make the most of the resources available. We fully support the efforts of the Prosecutor and her Office to ensure that the perpetrators of those terrible crimes are held to account and to end the climate of impunity.

**Mr. Delattre** (France): I thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her twenty-second report and her briefing. Ms. Bensouda reminds us again, more than 10 years after the adoption of resolution 1593 (2005), that civilians in Darfur remain the targets of violence, in particular at the hand of the Government, and that the African Union-United Nations Hybrid Operation in Darfur (UNAMID) is not fully able to exercise its mandate to protect civilians.

We share the concerns highlighted once again in the Prosecutor's report, which reflect those expressed by the Council in resolutions 2173 (2014) and 2228 (2015). Those include the ongoing deterioration of the security situation in Darfur; the ongoing aerial bombing carried out by the Sudanese Air Force, resulting in direct and indirect civilian casualties; the ongoing clashes among tribes caused by obstructed access to natural resources; the prosecution of the crimes of rape and sexual violence in which the Government's armed forces might be involved; the ongoing forced displacement resulting from the continued violence and military escalation; the arrest of political opponents and threats and attacks against humanitarian personnel; the numerous obstacles to the delivery of assistance to civilians by humanitarian organizations and to the implementation of the UNAMID mandate; and lastly, the apparently new factor of a mass influx of non-Sudanese populations.

As Ms. Bensouda has also recalled, the arrest warrants issued by the International Criminal Court over 10 years ago have still not been executed. Five individuals have been indicted for war crimes, crimes against humanity and, in one case, the crime of genocide, and continue to evade the jurisdiction of the Court. For the most part, they continue to occupy senior positions in the State apparatus of the Sudan. Such a situation of impunity only encourages the continuation of atrocities and, as Ms. Bensouda reminds us, undermines the credibility of international criminal justice.

The Council has long known how to respond to the situation. Halting those numerous forms of violence and crime involves, in particular, the following five components. First, it involves concluding and implementing a political solution that involves the Government and the rebel groups. On that account, we regret that the latest national pre-dialogue meeting, held in Addis Ababa several weeks ago, did not lead to substantial progress. Efforts must be pursued to end the hostilities, which must facilitate a comprehensive political solution, as envisaged by the African Union Peace and Security Council. That is a precondition for a lasting settlement to the crises in the Sudan.

Secondly, it involves the effective protection of civilians and full cooperation on the part of the Sudanese authorities in allowing UNAMID to implement its mandate. The ongoing violence and absence of security prevent any prospect of stabilization and long-term reconstruction. The human consequences of the crisis remain exceptionally serious, while the Sudan has more

than 2.6 million long-term internally displaced persons and violence against civilians — especially against women — and looting persist.

Thirdly, it requires unhindered humanitarian access to civilian and displaced populations. In that regard, we regret that UNAMID remains subject to restrictions in its access and the ongoing target of attacks and harassment. It is essential that it be ensured free and unrestricted access throughout all of Darfur.

Fourthly, it involves prosecuting the perpetrators of crimes and an effective campaign against impunity. As the Prosecutor noted, the Sudan, which is bound to cooperate with the Court and fight impunity, has taken no action to prosecute the responsible parties for crimes committed in Darfur. On 19 November, the Court issued a new decision on non-cooperation on the part of the Sudan with regard to the *Banda* case. That is the eleventh time that the Court has noted a lack of cooperation. It is also appropriate to recall that the States parties to the Rome Statute have a key role to play with regard to their obligation to cooperate with the ICC and to execute its arrest warrants when the individuals subject to them are within their territory.

Fifthly, it requires limited contacts between persons subject to arrest warrants and those who are deemed to be essential, in line with the Secretary-General's policy. France calls upon the United Nations as a whole to apply those directives and implement the relevant provisions of resolution 1593 (2005). In that context, the Council must act on two fronts. First, it must encourage parties to end all violence against civilians. That means that all members of the Council must acknowledge the ongoing deterioration of the situation of civilians, noted once again in the Prosecutor's report. It also requires UNAMID to be fully able to carry out its mandate, including by ensuring its complete and unhindered freedom of movement.

We also need to make cooperation with the International Criminal Court effective and ensure that it is able to execute arrest warrants, which is necessary in order for the Court to carry out its mandate. It is the Council's responsibility to respond to cases of non-cooperation that the Court brings to its attention and to that of the Assembly of States Parties, as recalled in its resolution of 26 November. International organizations must also remain mobilized with regard to cases of non-cooperation with the International Criminal Court.

**Mr. Sarki** (Nigeria): First of all, I welcome Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), and thank her for her briefing.

Nigeria takes due note of the twenty-second report of the Prosecutor, pursuant to resolution 1593 (2005), and the judicial activities undertaken by the Court and the Office of the Prosecutor over the past six months. According to the report, the Office of the Prosecutor is currently monitoring several trends in Darfur that could constitute crimes under the Rome Statute. Those include alleged sexual crimes. We are appalled by the widespread nature of the sexual crimes outlined in the report. We condemn in the strongest terms all forms of sexual violence against women and girls, including underage girls. It is important that the perpetrators be identified and brought to justice.

Humanitarian workers and peacekeepers continue to face great challenges in the course of their work in Darfur. Abductions and attacks are complicating what is already a difficult operating environment. We deplore all hostile acts against peacekeepers and humanitarian workers. Some of those acts have, unfortunately, resulted in loss of life. We offer our deepest condolences to the families of peacekeepers and humanitarian workers who have lost their lives in Darfur. We look forward to seeing a determination as to whether these hostile acts constitute crimes under the Rome Statute.

The impact of intercommunal clashes on the lives of the civilian population in Darfur is a matter of concern to us. The fact that these clashes accounted for half of the 760 deaths in the reporting period underscores the urgent need for measures to prevent them. We are aware of the efforts of the Government of the Sudan to contain the effects of fighting between different ethnic groups. We believe that more needs to be done to address the root causes of the tensions, and by so doing facilitate permanent reconciliation among the communities.

There can be no military solution to the conflict in Darfur. The path to lasting peace, stability and security in the region lies in dialogue and negotiation. The Doha Document for Peace in Darfur provides a viable framework for achieving this. We welcome the efforts of His Excellency President Omar Hassan Al-Bashir to seek a political solution to the conflict. His recent announcement of the Sudanese Government's commitment to extending the cessation of hostilities to a permanent ceasefire if the armed groups lay down their arms and join the national dialogue is a

clear demonstration of the President's commitment in that regard. We encourage the armed groups to stop fighting and work with the Government of the Sudan, the African Union and the international community to end the conflict in the region.

**Mr. Van Bohemen** (New Zealand): We, too, thank Ms. Bensouda for her briefing.

We are deeply concerned about the situation in Darfur. At Ms. Bensouda's most recent briefing on this item (see S/PV.7478), New Zealand spoke at some length about the gravity of the situation and the need for accountability. While, as Ms. Bensouda has reported, nothing has really changed, I will not reiterate the statements I expressed in June. Instead I want to focus on non-cooperation with the activities of the International Criminal Court (ICC) in the Sudan. That is the key issue before us today. It has been the key issue before us at these briefings for more than 10 years.

As a State party to the Rome Statute, New Zealand is concerned by all instances of non-cooperation, whether they occur in relation to a Security Council referral or otherwise. However, we are realistic and we know there are non-States parties around this table that may not share those concerns. As such, today we will focus on a concern that every member of the Council and every Member of the United Nations must share — non-compliance with Chapter VII resolutions of the Council.

The Sudan is required, under resolution 1593 (2005) and the Charter of the United Nations, to cooperate with the ICC investigations in Darfur. The Sudan's non-cooperation with the Court amounts to non-compliance with a Council resolution and its obligations under the Charter. As the Prosecutor has reminded us so clearly and uncomfortably today, the Council has responded with deafening silence to the situation. The Council's inaction in the face of this non-compliance with its own resolution undermines its credibility. Indeed, it undermines the credibility of all of its decisions. That is a serious issue. Sadly, it is a regular issue.

The Secretary-General has relayed 11 findings of non-cooperation to the Council. The most recent was last Friday. That finding relates to Mr. Abdallah Banda, an indictee from a rebel group who is alleged to be responsible for a deadly attack against African Union peacekeepers in South Darfur and Darfur in 2007. It is alleged that Banda led a group which attacked an

African Union Mission in the Sudan (AMIS) camp with anti-aircraft guns, artillery guns and rocket-propelled grenade launchers, killing 12 peacekeepers from Nigeria, Mali, Senegal and Botswana. The Council unanimously adopted presidential statement S/PRST/2007/35, condemning this attack and demanding that no effort be spared in identifying and bringing to justice its perpetrators. The Prosecutor of the ICC has taken up this call and is trying to pursue Mr. Banda. She is, however, stymied in her efforts. The Government of the Sudan refuses even to receive her communications on the case, let alone cooperate in any practical or tangible way. Mr. Banda, whom the Council committed to bringing to justice, is at large in the Sudan, and the Council has done nothing to support the one institution seeking to bring him to justice.

In the face of that contradiction, New Zealand would like to make two proposals. They are not a substitution for or in contradiction to the proposals just outlined by the Prosecutor, which we also fully endorse. Our first proposal is simple. We propose that the Council be more structured in its consideration of these findings of non-cooperation. There is currently no consistent practice. In most instances, despite these findings being relayed by the Secretary-General in accordance with the Relationship Agreement between the United Nations and the International Criminal Court, the Council does not even discuss them, and certainly not in any fulsome way. In our view, when a non-cooperation finding is received, the Council should discuss it. As we would with other issues, we should consider all the tools the Council has at its disposal, such as a resolution or another product, even a press statement, a letter from the Council or a meeting with the concerned country. Then we should make an assessment on a case-by-case basis about which, if any, of those tools we should use.

We accept that, as is often the case, the Council may not agree on which tool to use or how to respond. The fact that we may differ on how to respond should not mean that the Council does not consider fully the options before us. If the Council ignored every instance where we did not agree, there would be many important issues left off our agenda. This is an issue that goes to the effectiveness of the Council and its decisions, and needs to be addressed. To ignore these issues is neither a productive nor a credible way forward.

Our second proposal goes to the deeper issue — the Council's relationship with the Government of the Sudan. While it may seem obvious, it deserves repeating

that a crucial part of the Council's ability to ensure the implementation of its decision is its relationship with the country concerned. As we have said before, including when the Prosecutor was here in June, the current Council approach to the Sudan is not working. There is a clear need for the Council to build a new relationship with Khartoum. There is an opening now. We should capitalize on the appointment of the new Joint Special Representative of the Secretary-General for Darfur and Head of the African Union-United Nations Hybrid Operation in Darfur, Martin Uhomoibhi, as a moment to revitalize the Council's relationship with the Sudan. Part of the Council's building of this relationship and a renewed approach should be a better understanding of the situation on the ground. In that regard, New Zealand would see a Council visit to the Sudan as a good opportunity that should seriously be considered.

These two proposals are about getting the essentials of our work right: credible working methods, effective relationships and good information. While some steps are simpler than others, continuing to do nothing is not an option.

I would like to close by recognizing Chile's contribution as the focal point for States parties on the Council to many of the matters I have raised today. Ambassador Barros Melet's leadership and that of his team will be missed.

**Mr. Lucas** (Angola): We thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her briefing and for her twenty-second report on the situation in Darfur, submitted to the Security Council pursuant to resolution 1593 (2005), in which the Council determined that the situation in Darfur constituted a threat to international peace and security and thereby referred the situation to the International Criminal Court. Ten years have passed since the decision was adopted, with the international community remaining deeply concerned over the situation in Darfur, which is characterized in the report as an escalating conflict between Government forces and rebel armed groups, intercommunal disputes, a rise in criminality and banditry and widespread violence, all of which have had an extremely negative impact on the civilian population.

The Security Council, through resolution 2228 (2015), expressed serious concern at the continuing deterioration of the security situation in Darfur, calling into account those responsible for violations of human rights and international humanitarian law. Faced with a

lack of cooperation on the part of Sudanese Government with the Court and the Government's refusal to hand over high-ranking officials indicted by the Court, the Prosecutor in her report looks into measures adopted by the Security Council to date to obtain the Sudan's compliance with its obligations arising from the Rome Statute. The Office recalls that the Security Council has seemingly not adopted any measures to enforce its decision, undermining the Council's credibility and the mechanism and purpose of situation referrals by the Council to the ICC.

The lesson to be learned from the referral of high-ranking officials of the Sudan to the ICC is that there is a high risk of failure when attempts are made to politicize the international criminal justice system by making it a tool for reaching political ends, as typified by that specific Security Council referral to the International Criminal Court. In that regard, the Republic of Angola, as a member of the African Union, supports the African position concerning the case of the International Criminal Court against Omar Al-Bashir of the Sudan, an acting and elected President.

We wish to recall the decision taken at the African Union Summit held in June, which, *inter alia*, requested the suspension of all proceedings against President Omar Al-Bashir, urging the Security Council to withdraw the referral of the Sudan's case to the ICC. The refusal of the Security Council to act on the request has compelled the African Union to reserve its cooperation with the ICC. In that regard, we support the decision of the Republic of South Africa to respect the entitlements, privileges and immunities due to the President of the Sudan, Mr. Omar Al-Bashir, during his stay in Johannesburg to attend the African Union Summit. We note that other African countries mentioned in the report — namely Mauritania, South Sudan, Algeria and Ethiopia — have complied with the African Union decision.

In that regard, we appeal to the Security Council to consider the African Union request for a more constructive relationship with the ICC, while Angola will continue upholding the African Union's stand on that issue and advocating dialogue and peaceful solutions to the disputes in Darfur, Sudan, and elsewhere. We fully agree with the ICC Prosecutor that the victims of Darfur deserve tangible justice and that they deserve to see justice served. We are convinced that the people of Darfur will receive justice only when a just and lasting peace is attained in Darfur. We hope

that the current initiatives of the Sudanese Government will bear fruit conducive to peace, reconciliation and justice.

**Mr. Barros Melet (Chile)** (*spoke in Spanish*): Once again, we welcome the presence of the Prosecutor of the International Criminal Court, Ms. Fatou Bensouda, and thank her for introducing her twenty-second report on Darfur, Sudan, pursuant to resolution 1593 (2005).

As acknowledged by the Prosecutor in her powerful report, it is unacceptable that 10 years after the referral of that case to the Court, the humanitarian crisis in the region remains highly alarming due, *inter alia*, to the lack of adequate accountability and cooperation to that end. My country reiterates its categorical condemnation of the serious crimes against civilians cited in the report, all of which are cited in various resolutions of the Council. These include aerial bombardments, sexual and gender-based crimes, and attacks on human rights defenders, humanitarian workers and members of the peacekeeping operation.

My country feels duty-bound to reiterate and emphasize the call for full cooperation with the International Criminal Court and its Prosecutor, pursuant to resolution 1593 (2005). Such cooperation is required not only of States parties to the Rome Statute of the International Criminal Court, but of all States and relevant regional and international organizations, in accordance with the provisions of paragraph 2 of resolution 1593 (2005). Such cooperation should be reflected in diverse aspects, particularly in the ongoing investigations and the implementation of judicial orders and rulings.

In point of fact, the responsibility of the Council under the Charter of the United Nations must not be circumvented. Therefore, justice for victims of crimes committed in Darfur cannot be systematically denied, which — in the light of the crimes committed and given that a decade later not a single arrest warrant has been executed — is at the very least inconsistent with the purpose of referring such situations to the Court.

In that regard, my country welcomes the tireless efforts of the Prosecutor to pursue her investigations and the quest for accountability in the Sudan. We commend the work undertaken day in day out by her team. The provision of support and resources for the cases referred by the Council is, in our view, a priority and critical matter. As we stated on the occasion of the submission of the tenth briefing of the Prosecutor



on the situation in Libya (see S/PV.7549), the Council must consider the roll-out of complementary financing mechanisms that would allow the Prosecutor to carry out her investigations in an effective and efficient way.

Chile will continue to work to promote a closer relationship between the Council and the International Criminal Court, particularly with respect to the two cases referred. Failure to address the lack of effective follow-up to these cases represents a failure of our goal to work for the maintenance of international peace and security. We call for the adoption of tangible measures to strengthen due cooperation and to implement the Security Council resolutions.

**Mr. González de Linares Palou** (Spain) (*spoke in Spanish*): I thank Ms. Fatou Bensouda for coming here this morning to brief the Council. I would like to begin by welcoming the outstanding work undertaken by the International Criminal Court and the Prosecutor against very complex circumstances, particularly given the lack of cooperation on the part of the Sudan and other States, as well as the lack of support from the Council.

The Sudan must cooperate. Not being a party to the Rome Statute is not a valid reason not to cooperate, especially when there are Security Council resolutions that are legally binding and enforceable under the United Nations Charter. Failing to abide by this obligation is inexcusable. Resolution 1593 (2005) was the first such resolution to refer an issue to the International Criminal Court and constituted a milestone in the Council's commitment to the fight against impunity.

However, some 10 years and 22 reports later, nothing has changed. None of the arrest warrants enacted for the alleged commission of the most serious crimes constituting genocide, crimes against humanity and war crimes has been carried out. The Council continues not to respond to the Court's reports of non-cooperation. That lack of response, as earlier speakers have noted, is undermining the credibility of the Council and casting doubt on the strength of our commitment to fighting impunity.

This is not the only issue, however. Our failure to act is also undermining the credibility of the Court itself and is causing it to squander its limited resources in pursuit of goals that are impossible to achieve.

I should like to ask two questions: what is the point of adopting a referral resolution if there is no willingness

to implement it? What message are we sending to those who believe themselves entitled to flout the most fundamental norms of international humanitarian law and to commit human rights violations, without fear of the consequences and with complete impunity, not only in Darfur but also in other parts of the world?

The humanitarian crisis and insecurity continue to prevail in Darfur. The civilian population, the staff of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and humanitarian workers continue to be the target of all parties to the conflict. Impunity continues to reign in Darfur. The obstacles faced by UNAMID continue to put at risk its capacity to fully discharge its mandate. It is key that the Mission be able not only to protect civilians and facilitate humanitarian access but also to continue to document violations and abuses.

We fully agree with the Prosecutor that the current situation is unacceptable and cannot go on. The Security Council, in adopting resolution 1593 (2005), made a commitment to the victims and to the people of Darfur. The time is ripe for us to honour that commitment. We reiterate to all parties their ineluctable obligation to fully comply with the norms of international humanitarian and human rights law. We would also recall the particular responsibility borne by the Government of the Sudan to protect its people. There can be no military solution to the conflict; it must be political and based on an inclusive dialogue. We wish also to reiterate that all States parties to the Rome Statute are obligated to cooperate with and provide assistance to the Court, and we call upon all others to work to implement resolution 1593 (2005).

We note once again that the cost of referrals continues to be borne solely by the States parties to the Rome Statute and that article 13 of the Relationship Agreement between the United Nations and the International Criminal Court remains unimplemented.

I should like to conclude by conveying our support and gratitude to the personnel of UNAMID, to the Prosecutor and to the Court, as well as to all those who, in the midst of such difficulties, continue daily to make every effort to collect information, gather evidence and identify those in Darfur who believe that they can operate outside the law. We trust that one day they will be brought to justice.

**Mr. Cherif** (Chad) (*spoke in French*): I wish at the outset to thank Ms. Fatou Bensouda, Prosecutor of the

International Criminal Court (ICC), for presenting her report and to commend her leadership.

Unfortunately, the security situation in Darfur, despite a relative period of calm, remains characterized by intercommunal violence, criminal acts and banditry, resulting in ever more civilian victims and displaced persons. Against a backdrop of war, insecurity and instability, it is very difficult, nigh impossible, to create the conditions for real justice so as to bring to trial the alleged perpetrators of the crimes committed in Darfur. That is why we have consistently recalled the relevance of the approach of the African Union, which involves addressing the issues of peace and justice simultaneously.

Although the ongoing efforts of the Office of the Prosecutor are deeply appreciated and welcomed, as they seek to bring about justice in a context of war, to date they have not, unfortunately, been fruitful. For that reason, might it not be a good idea to integrate the element of justice into the peace process, so as to put an end to impunity?

Chad remains convinced that there can be no military solution to the Darfur crisis and therefore urges all members of the Council to support peace initiatives such as the Doha Document for Peace in Darfur and the mediation of the African Union High-level Implementation Panel, with a view to promoting peace and justice through dialogue.

From that standpoint, the Security Council and the African Union must speak the same language. They must pool their efforts in order to restore lasting peace in Darfur and to enable justice to be implemented in all its aspects. To that end, we commend the convening on 10 October by the Sudanese Government of the national dialogue conference, which, for the first time, brought together all segments of society and a large number of the country's political stakeholders, as well as three Darfur armed factions.

We urge all Sudanese armed groups, without distinction, to join the national dialogue process, because a political solution open to all is crucial in order to the restoration peace in the region, which has been ravaged by war for more than a decade now.

Chad, which hosts many displaced persons from Darfur, is being hit by the full force of the consequences of the growing insecurity in that neighbouring area. It therefore underscores the need to integrate efforts to achieve justice into the overall approach aimed at

bringing peace, good governance and democracy to the Sudan. In that context, we deem it timely to undertake a serious joint process of reflection between the Council and the African Union on how best to support the International Criminal Court in accomplishing its mission, drawing lessons from the lengthy and fruitless approach taken so far and taking due consideration of the pertinent, realistic concerns of the African Union on this issue.

Chad, which is a State party to the Rome Statute, reiterates its full support for the ICC and urges it to step up its interaction with regional organizations, in particular with the African Union, in order to enhance the effectiveness of its action, with a focus on results.

**Ms. Jakubonė** (Lithuania): I thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her briefing today.

We commend the Office of the Prosecutor of the ICC for its continuing efforts to fulfil the mandate to investigate the crimes under the Rome Statute committed in Darfur. We have often reiterated our concern about the situation in Darfur and Council referrals to the Court. However, the ongoing security and humanitarian crisis in Darfur continues to be marked by widespread violence, impunity and displacement.

As highlighted in the report of the Prosecutor, despite a decrease in the number of incidents, the situation in Darfur is not improving. Restrictions of movement impact humanitarian assistance. Civilians continue to be the primary victims of indiscriminate aerial bombardments. An intensification of alleged inter-tribal fighting causes an immense loss of life. Humanitarian aid workers and peacekeepers are subject to constant attacks. Widespread sexual and gender-based violence remains a horrible feature of this conflict. All those violations and abuses of human rights and violations of international humanitarian law continue with absolute impunity. As the Prosecutor states in her report, there are numerous allegations of ongoing crimes that may fall under the jurisdiction of the Court. We urge the Prosecutor's Office to continue to closely monitor various crimes allegedly committed in Darfur.

The semi-annual briefings by the Prosecutor have provided a consistent message. The ICC cannot fulfil its mandate unless the Darfur suspects are arrested and transferred to The Hague. Five individuals accused of genocide, war crimes and crimes against humanity

continue to evade the Court's jurisdiction. Most of them even occupy the highest posts in the Government of the Sudan. We are deeply concerned that the Sudan has still not taken any meaningful steps to apprehend those five individuals and that other States in a position to do so have not acted either.

Just last week, the Security Council received from the Court another formal finding of non-cooperation against the Sudan. The latest decision of the Court on non-compliance against the Republic of the Sudan is a serious reminder that the Security Council needs to follow-up on its referrals. However, despite the efforts by many members of the Council to date, it has not been possible to reach an agreement on any follow-up mechanism.

The report of the Prosecutor also reminds us that a lack of cooperation persists not only from the side of the Government of the Sudan, but also from other States. Regular travel by the indictee against whom the arrest warrant is in force once again shows that all States, not just parties to the Rome Statute, should cooperate fully with the Court in order to strengthen international efforts to fight impunity.

The lack of cooperation has also led to unfortunate recent development in the *Al-Bashir* case, when eight victims with participatory rights withdrew from the case and from the Darfur situation generally, due to perceived lack of progress. This situation proves that victims cannot wait for justice forever. Despite our concern about this development, we call on the Office of the Prosecutor to continue its support for the victims of the most serious crimes in Darfur.

Justice and accountability are integral parts of peace and reconciliation efforts. If left unaddressed, a lack of accountability encourages further and renewed human rights violations and abuses. The Security Council repeatedly calls on the Government of the Sudan to ensure accountability and bring perpetrators to justice. The Government of the Sudan should do more to end attacks against civilians, ensure accountability and guarantee justice for the victims.

In conclusion, as this is the last time that Lithuania will have an opportunity to address the matter as a member of the Council, I would like to reiterate Lithuania's full support to, and cooperation with, the Court. I also wish to underscore that the International Criminal Court is an institution born from a shared

understanding that injustice will be brought to light and that serious crimes must not go unpunished.

**Mrs. Adnin** (Malaysia): I join other speakers in welcoming Prosecutor Bensouda to the Security Council and in expressing our appreciation for her briefing, which we have listened to intently. My delegation takes note of the activities of the Office of the Prosecutor as outlined in Ms. Bensouda's twenty-second report to the Council as well as the decision of the International Criminal Court's Trial Chamber IV on the Prosecutor's request for a finding of non-compliance in the case of *Prosecutor v. Abdallah Banda Abakaer Nourain*, dated 19 November 2015.

While noting that there has been a considerable decrease in the number of clashes among Government forces, militia and armed movements in Darfur, Malaysia remains concerned that the security situation might yet worsen with the onset of the dry season. Intercommunal clashes, largely due to competition over resources, have continued to have an impact on and displace the civilian population. These confrontations — and the ensuing human cost in terms of deaths, injuries and displacement — have negatively impacted the overall security situation in Darfur. We are concerned that an escalation of such clashes may further destabilize the Darfur region. Accordingly, there is an urgent need for the Government of the Sudan to identify and effectively address the root causes of the intercommunal conflicts.

The humanitarian situation in Darfur as a result of the continued precarious security situation remains a concern for us. The conflict has resulted in an increase of more than 430,000 displaced persons since the beginning of the year, in addition to the more than 2 million long-term internally displaced persons in Darfur. We call on all parties to immediately cease all attacks on the civilian population. All parties to the conflict must abide by their obligations under international human rights and international humanitarian law.

We are further concerned that insecurity in Darfur has had a negative impact on the safety of United Nations staff, particularly those of the African Union/United Nations Hybrid Operation in Darfur (UNAMID) and on humanitarian personnel. We unequivocally condemn attacks against UNAMID, which have resulted in the deaths of peacekeepers and a national staff member. We call on the Government of the Sudan to conduct an investigation into those attacks and bring those responsible to justice.

The security situation in Darfur is also compromised by the proliferation of small arms and light weapons and criminality in the area. In that regard, we are encouraged to note that emergency security measures have been introduced by the Governor of South Darfur in an attempt to improve the security situation in his jurisdiction. At the same time, we join other Council members in calling on the Government of the Sudan to discharge its primary responsibility to investigate allegations of human rights violations and abuses, including extrajudicial killings, abduction of civilians, acts of sexual and gender-based violence, violations and abuses against children and arbitrary arrests and detentions in Darfur.

In conclusion, Malaysia remains convinced that the conflict in Darfur cannot be resolved militarily. In that regard, we call on all parties to remain guided by the Doha Document for Peace in Darfur and to continue their constructive engagement towards fully implementing the provisions of the Document. Malaysia is of the view that efforts by the Government of the Sudan to demonstrate its compliance with the relevant Security Council resolutions and its commitment to hold accountable those responsible for violations of international human rights and international humanitarian law would contribute positively and go a long way towards building trust and confidence.

**Mrs. Kawar** (Jordan) (*spoke in Arabic*): At the outset, I would like to thank Ms. Fatima Bensouda, Prosecutor of the International Criminal Court (ICC), for her briefing today and for presenting the twenty-second report to the Security Council pursuant to resolution 1593 (2005), of which we take note.

Jordan reiterates the importance of the role played by the Court in effectively supporting stability and the maintenance of international peace and security and upholding the rule of law. The Court is a major pillar in strengthening criminal justice, prosecuting the most serious crimes under international law, and ending impunity for the perpetrators of such crimes, which is a matter of concern for the entire international community. Jordan also reiterates the importance of cooperating with the ICC to implement its mandate and the relevant Security Council resolutions.

Jordan remains concerned about the report's references to the prevailing humanitarian situation in Darfur, the continued violations of human rights and international humanitarian law, and the repeated attacks against civilians and humanitarian workers

and peacekeepers. It is also necessary to stress the importance of adopting a sustainable development plan that addresses the real needs of the local population in Darfur, allows them to meet the economic and social challenges and guarantees the return of refugees to their original territories, because justice and development must be brought to the region if security and stability are to be restored.

Finally, it is worth saying that sustainable peace cannot be achieved without the cooperation and coordination of all the relevant stakeholders.

**Mr. Zhao Yong** (China) (*spoke in Chinese*): China listened carefully to Prosecutor Bensouda's briefing. The current situation in Darfur is generally stable. China welcomes the efforts of the Sudanese Government and the relevant rebel groups to implement the Doha Document for Peace in Darfur. We hope that the parties concerned in the issue of Darfur will adhere to the political settlement, take an active part in the national dialogue and, through dialogue and consultation, seek a comprehensive political solution to the issue. We also hope that countries that have influence over the rebel groups in Darfur will play a constructive role in this process. We call on the international community to work to create external conditions conducive to a political solution to the Darfur issue.

China's position on the involvement of the International Criminal Court (ICC) in the Darfur issue remains unchanged. At the same time, we also believe that the concerns of the African Union and the countries concerned about the ICC's involvement in Darfur deserve serious attention.

**Mr. Ramírez Carreño** (Bolivarian Republic of Venezuela) (*spoke in Spanish*): I would like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her presentation of the twenty-second report on the investigation of the situation in the Sudan. We also commend the work of the Office of the Prosecutor and the Court in combating impunity and promoting justice for victims of the crimes cited in article 5 of the Rome Statute, to which Venezuela has been an active party since its entry into force in 2002.

We believe that international cooperation is an essential ingredient for the full achievement of the Court's objectives, a view endorsed by the Security Council in resolution 1593 (2005), which calls for the cooperation of the Government of the Sudan and the international community, with the goal of strengthening

the rule of law, protecting human rights and combating impunity in the Darfur region. To that end, we believe that cooperation between the Security Council, the International Criminal Court and regional bodies such as the African Union has a critical role to play in ensuring that political agreements founded on mutual respect and unwavering observance of international law, aimed at achieving peace, stability, development and justice, can be arrived at in the Sudan.

Venezuela considers the issue of accountability to be particularly important, since we believe it makes a major contribution to fostering a climate of trust in the State institutions of the Sudan, as well as to breaking the cycle of impunity, particularly in Darfur. In that regard, we also believe that making accountability a concrete reality is an important part of achieving a lasting peace in the post-conflict phase.

In supporting the Prosecutor's efforts to ensure that justice and accountability are realized, we would also like to urge the Court to be objective and impartial in evaluating the situation. Its role in an impartial investigation of the actions of all parties to the conflict is crucial to strengthening its credibility. The ICC must work in a balanced way to promote justice and the achievement of a lasting, sustainable, comprehensive and holistic peace. In that regard, we are concerned some elements' attempts to politicize the work of the International Criminal Court, and thus undermine the principles that govern it. They weaken the Court's institutional status, to the detriment of the spirit and purpose of the Rome Statute.

Venezuela firmly and unreservedly condemns armed attacks that target the civilian population, which are a flagrant violation of international human rights and humanitarian law, whoever perpetrates them and for whatever reason. We are therefore extremely concerned about the fact that the report continues to describe a continuing complex situation of violence and abuse in Darfur. We urge all parties to put an end to such practices, which are unacceptable under international law.

We would like to reiterate our support for the position of regional bodies and joint political entities such as the African Union, the Organization for Islamic Cooperation, the League of Arab States and the Non-Aligned Movement, among others, regarding the defence of the principle that should govern the Sudan's entities and constitutional proceedings in order to ensure

their compliance with the International Criminal Court regarding the necessity of complementarity for all the bodies involved. For that reason, we call for improved cooperation between the ICC and the Government of the Sudan, as well as between the countries of the region, in order to ensure accountability for violations of international humanitarian and human rights law. Such cooperation would also help in reaching a solution to the conflict in Darfur aimed at achieving peace and justice for the Sudanese people, in line with international law.

**Mr. Zagaynov** (Russian Federation) (*spoke in Russian*): We have taken note of the twenty-second report of the Prosecutor of the International Criminal Court on the Court's investigation of the situation in Darfur, and we thank Ms. Bensouda for her participation in today's meeting and her presentation of the report. Unfortunately, the fact that it was distributed to the Council so late — a day before our discussion, basically — prevented us from studying it in detail.

We note the report's conclusion about the decrease in the number of security incidents in Darfur in the second half of the year, owing to the significantly weakened military capacity of the Darfur rebels who have no real support among the population. The main source in the region of violence and humanitarian problems, including increasing numbers of displaced persons, is intercommunal clashes resulting from centuries-old struggles for natural resources. We greatly appreciate the efforts of the Sudanese authorities to stabilize the situation and promote reconciliation among warring tribes.

We note that the Office of the Prosecutor has continued to investigate crimes related to the Darfur issue. In that regard, we focused on the assertion that two thirds of the incidents involved Government forces and groups loyal to the authorities, while the rest are the work of unknown persons and other unnamed entities. We believe we should call a spade a spade. The Darfur rebels are guilty of serious violations of human rights and the norms of international humanitarian law, including the recruitment and use of child soldiers. It is the rebels as well as the authorities who are creating obstacles to the work of the United Nations bodies and non-governmental organizations in Darfur.

We also focused on the information on air strikes in the Jebel Marra area, according to which 50 civilians were killed during the reporting period. We are not

about to assess the reliability of those numbers in conditions where there is no access for United Nations personnel. But it is clear that combat operations are being conducted in those areas by an armed opposition that does not shrink from using civilians as human shields.

We note the Prosecutor's comments regarding States' cooperation with the ICC on the problem of Darfur. There can be no doubt that States' support plays an important role in helping the Court achieve its goals. At the same time, however, it is clear that this is a complex area and that the States themselves, as well as the Court, have concerns about the situation. We sympathize with the concerns voiced by African States and the African Union regarding the ICC. We would like to emphasize once again that States' specific obligations regarding cooperation with the ICC can vary, including those relating to the immunity of senior State officials in the light of international judicial norms.

Regarding the proposals for so-called follow-up action by the Security Council in referring cases to the International Criminal Court, we have repeatedly stated our position on the matter in the Council and it is well known.

In conclusion, we would once again like to call on the Court and the Prosecutor to take a comprehensive and balanced approach to administering justice and achieving peace, including with regard to the investigation of the situation in Darfur.

**The President:** I shall now make a statement in my capacity as the representative of the United States of America, and I would like to thank Prosecutor Bensouda for her briefing.

The fact that the situation in Darfur today is stark is not news to anyone in the Chamber; we have been talking about it for over a decade. In 2005, the Council referred the situation in Darfur to the International Criminal Court in the face of brutal attacks on civilians, widespread rape and the destruction of entire villages. Ten years later, the people of Darfur continue to suffer. As the Prosecutor said, it should be and is a source of concern that the situation remains dire. But the intractability of the problem is not a reason to accept the situation as it is. We cannot become inured to impunity and atrocity and we cannot look away simply because what has transpired, and is transpiring, is not

news. Justice demands more, and so too do the people of Darfur.

In the face of the Sudan's continued non-cooperation, which has systematically frustrated the Court's important work, we continue to call on all States to demand that the Sudan fully cooperate with the International Criminal Court. It should not be that President Al-Bashir repeatedly travels across international borders when the Court has issued two warrants for his arrest and the victims of his alleged crimes continue to wait for justice. We should not be complacent. The United States will continue to urge Governments, whether or not they are States parties to the Rome Statute, not to invite, facilitate or support travel by those who face arrest warrants for alleged crimes committed in Darfur. The fact that such individuals, including President Al-Bashir, remain at large is an affront to the hundreds of thousands of men, women and children in Darfur who have suffered immeasurable losses and pain. The United States strongly believes that the Court's arrest warrants in the Darfur situation should be carried out. We welcome the Prosecutor's affirmation that her Office has not abandoned the victims of alleged Rome Statute crimes committed in Darfur.

It is not just the people of Darfur who deserve justice, but also the men and women who have committed themselves to protecting the civilians. Let us remember that one of the cases before the Court involves attacks on African Union peacekeepers in Darfur. That very case was the subject of the most recent decision regarding the Sudan's non-compliance transmitted to the Security Council. Since 2007, when the African Union-United Nations Hybrid Operation in Darfur (UNAMID) was established, 218 mission personnel have given their lives in fulfilment of its mandate. Too many months bring news of one or more such deaths or other casualties. Just over the past eight months, UNAMID has seen one person killed in May, one killed and four injured in September, and one killed and one injured in October. The slow pattern is deadly and steady and, at the very least, the Council should be united in demanding accountability for violence against peacekeepers, who have put themselves in harm's way in service to others.

Today, in Darfur, among other tasks, the nearly 21,000 person-strong UNAMID mission has been working tirelessly to restore security conditions for the safe provision of humanitarian assistance, facilitate

full humanitarian access throughout Darfur, protect civilians and promote respect for human rights. The environment in which UNAMID operates is a difficult and a dangerous one. Such difficulties are compounded by a lack of full cooperation on the part of the Government of the Sudan on issues such as the timely processing of visas for UNAMID personnel, the clearance of shipments, including food and specialized military equipment belonging to troop-contributing countries destined for the mission, and freedom of movement of UNAMID personnel in fulfilment of UNAMID's mandate. We must demand that the Government of the Sudan comply with its obligations under the status of forces agreement with the United Nations and the African Union. We have a long way to go when food for peacekeepers is used as a tool for leverage.

Those are not distinct phenomena. While the Government of the Sudan tries to impede UNAMID's work through obstruction and delay, it also tries to impede the Court's work by ignoring its obligations under resolution 1593 (2005) — all in the name of avoiding the international scrutiny that is so needed, such as, for instance, with regard to the reports of sexual violence in Thabit, where credible investigative work into alleged mass rapes remains incomplete, stymied by the Sudan's systematic denial of access to UNAMID personnel. The stakes are simply too high for the status quo to be acceptable. The Sudan's compliance with the Security Council resolutions and the work of the Court are not just Sudanese issues. We must not forget that it was the Council that referred the situation in Darfur to the Court more than 10 years ago.

The need for peace and justice in Darfur is important not just for the region but well beyond. The Government of the Sudan must not be allowed to conclude that it can continue to apply tactics similar to those that prompted the Council to act on Darfur to the two areas of Southern Kordofan and the Blue Nile. We must recall that when the Government of the Sudan conducts offensives, it has often been civilians who bear the heavy cost.

In conclusion, to be clear, those who commit heinous acts of violence and brutality in Darfur must be held to account. Those who have flouted the law and the Council must know that justice is patient. We will not be lulled or distracted. The United States will continue to work with the Security Council and the international community to seek accountability for the

crimes committed in Darfur. We will not forget the victims or the survivors nor will we cease to pursue the justice they so deserve.

I now resume my functions as President of the Security Council.

I give the floor to the representative of the Sudan.

**Mr. Mohamed** (Sudan) (*spoke in Arabic*): I would like to thank you, Mr. President, for giving me this opportunity to address the Security Council as a representative of a State Member of the United Nations that is interested in participating with comments and observations, as well as to underscore our national position with regard to the subject matter before the Council today.

It is important to make clear that I intend to do my duty in this capacity before a major organ of the United Nations, the Security Council, in accordance with the imperatives of the national position of my country and that of the African continent. That position is set out in the relevant resolutions of the African Union, adopted successively at the highest level since 2008 and until 2015, and in the synergetic positions of other political entities to which the Sudan is party, issued in unison and reflecting systematic aversion to the meddling and false accusations of the International Criminal Court (ICC). It is also consonant with our right under both statutory and customary international law, particularly the Vienna Convention on the Law of Treaties of 1969, which emphasizes the sovereign right of every country whether to be or not be a party to any treaty or international agreement. Therefore, in exercising that right, the Republic of the Sudan has opted not to be party to the Rome Statute. As mentioned, the Sudan is not bound by the ICC, as a non-party to the Rome Statute.

I would like to avail myself of the opportunity to extend to the Secretary-General, to the President and to members of the Security Council and all countries of the world at large my congratulations on the success of the Paris negotiations on curbing global warming, which threatens the Earth's very existence and the survival of the human race. We are hopeful, in the Sudan in particular, that that achievement will materialize in the future, in the form of stopping desertification in the Sahel region of West Africa, which was the fundamental factor in the exacerbation of the internal conflict in Darfur in 2003. We were pleased, in that regard, to finally see the United Nations Environment

Programme state, in its famous 2007 report, that the causes of conflict in Darfur are attributed to environmental degradation and desertification.

I would like to reiterate what we have said repeatedly — that the Sudan is committed, in compliance with its constitutional, legal, moral and cultural obligations, to prosecute the perpetrators of all crimes and violations defined and agreed upon under applicable provisions of international law. Such provisions include, inter alia, the Convention on the Prevention and Punishment of the Crime of Genocide of 1948, the four Geneva Conventions of 1949 and their first and second Protocols and the various human rights conventions and treaties, in accordance with its commitment to fight impunity.

As the Council is aware, Protocol II to the Geneva Conventions of 1949 stipulates, in article 3, paragraph 1, that:

“Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.”

There are also examples of countries vigorously pursuing and defending their national interests extra-territorially and striving to legitimize such actions, so why do others deny us the right to defend our territorial integrity and maintain law and order within our borders?

The report before the Council notes in several parts and in a clearly selective way, which is typical of the Court since its inception, the deterioration of security conditions in Darfur, including abductions and attacks on humanitarian workers and peacekeepers. As expected, the report contains no reference to the persons responsible for those violations, or the actual perpetrators, to whom we have referred in detail in our statement before the Council during its review of the periodic report on the African Union-United Nations Hybrid Operation in Darfur (UNAMID), on 28 October (see S/PV.7545).

We are concerned about clearly emphasizing the fact that the Prosecutor’s Office of the Court is responsible — through its actions and by explicitly and implicitly encouraging gun-toting rebels and armed outlaws — for all lives lost in Darfur since 2005, and for the human rights violations committed by those outlaws and the suffering of the injured and displaced

persons and the loss of property, not only in the Sudan but in all other cases in which the Court has intervened on the African continent.

The Court concocted — through the actions of its Prosecutor and thanks to vague and overly broad powers granted by the Statute to the Prosecutor and the Prosecutor’s Office, as well as by abusing the Prosecutor’s authority and deploying that authority to serve the interests of certain countries and non-governmental organizations that are well known for their influence on the Court’s process and, subsequently, on its work, competencies and funding — an unwarranted contradiction between the principles of justice and peace. By creating that contradiction, it has encouraged the ongoing killing and displacement of persons and of all types of abuses and violations in countries and regions where it has exercised jurisdiction, all of which happen, by chance, to be African countries, which is in fact no coincidence.

I would like to refer to the policy paper issued by the ICC Prosecutor’s Office in 2007, interpreting article 53 of the Rome Statute, entitled “Policy Paper on the Interests of Justice”, in which the concept of the interests of justice does not include peace. Such a policy not only undermines all future dispute settlement efforts worldwide, local or international, but also starkly contrasts with the core task of the Security Council under Article 24 of the Charter of the United Nations, thereby posing serious questions regarding the feasibility of submitting the report to the Council not once but twice per year.

Resolution 1593 (2005), by which the Council referred the situation in Darfur to the Court, and which we stress, with all due respect, is in violation of international law as it concerns a State that is not party to the Rome statute, emphasizes, in paragraph 5, “the need to promote healing and reconciliation”.

The same was emphasized by the African Union Peace and Security Council when it stressed, on 21 July 2008, that:

“The Council reaffirms its statement of 11 July 2008, in which it expressed its strong conviction that the search for justice should be pursued in a way that does not impede or jeopardize efforts aimed at promoting lasting peace”.

Due to the conduct of the Office of the Prosecutor and of the Chief Prosecutor, coupled with the policy paper issued by her Office, which rendered article



53 of the Statute ineffective and practically repealed, together with the overall principle of complementarity, it is due to such dispositions that the Minister of Foreign Affairs of South Africa stated on 18 November, before the Assembly of States Parties to the Rome Statute of the ICC that,

“South Africa cannot and will not be silent in the face of serious flaws in some of the practices of the Court in the interpretation of the Statute.”

The Minister further asked:

“Has this Court become the universally accepted institution for justice as initially hoped for when we established it?”

It is therefore not surprising in the least that the Court, as we have said, is directly responsible for all of the violations of human rights that have occurred in Darfur. The Court has transformed those outlaw perpetrators into more daring hardcore criminals capable of committing all sorts of crimes, including attacks on peacekeepers, in pursuit of media coverage for propaganda purposes, and the resulting instability and confusion, an example of which is the attack by an armed rebel movement on UNAMID peacekeepers in Darfur in 2008, which was distorted by global media entities, such as the *The Washington Post*, *The New York Times*, Cable News Network and the British Broadcasting Corporation, to implicate the Sudanese Government as having instigated affiliate militias to launch that attack. The Court has also discouraged outlaws from responding to calls for peace and invitations to join peace agreements, encouraging them, on the contrary, to mount attacks and instigate rebellion against legitimate national authorities.

In that context, and commensurate with its covert objective to drive a wedge between justice and peace, the Court strived to subvert the Abuja Peace Agreement of 2006, which was welcomed by the Security Council, and to divert attention from the Doha Document for Peace in Darfur, of 2011, which was also welcomed by the Security Council and which has been totally ignored in the report, with a view to undermining it, as well.

In that regard, I would like to note some positive developments that, fortunately, were overlooked in the last UNAMID report (S/2015/729), which was submitted to the Council on 25 September and includes first, a decrease in the number of displaced persons; secondly, the Government’s success in ending tribal hostilities — in which regard the Court’s report seeks

to incite racial and ethnic division and fuel hostilities by citing unfounded allegations of Arab settlement in Darfur — and thirdly, the successful internal dialogue in Darfur.

We consider the observations contained in this report regarding the Republic of the Sudan, which was among the first African countries privileged to join the membership of the United Nations, and its President, whose status is also enshrined in the 2005 Constitution of the Republic of the Sudan, as a symbol of the country’s sovereignty, and whom I have the honour to represent here at the United Nations, as not being worthy of the trouble to consider.

We also wish to refer to the Common African Position enunciated since 2008 concerning established international law on the immunity of Heads of State — a concept that is being further bolstered and fortified by the Sudan in its quest for peace and stability through the cessation of bloodshed, for the sake of which we have left no stone unturned. In so doing, African leaders have stressed their rejection of the targeting of African leaders and peoples under such pretexts as feasibility and possibility, which were introduced in the policy papers of the Prosecutor’s Office and which make individuals criminally liable, not through proof of guilt but by virtue of their nationality. In that regard, the representative of India was right when he said, on the occasion of at the adoption of the Rome Statute in the summer of 1998, that its first victim would be international law.

To date, the Court has received some 9,000 complaints through various channels, relating to situations in 139 countries where crimes and violations are being committed. Yet the Court and the Prosecutor’s Office have shown interest in leveling charges and opening proceedings and investigations only against African States. So far, it has issued indictments against 39 Africans and no one else. They have been singled out from among all humans on the vast planet with its five continents. I leave it to the consciences and minds of members of the Council to judge for themselves. By way of comparison, in the aftermath of the Second World War in Europe the Nuremberg Tribunal adjudicated hundreds of cases in just a single year, whereas the International Criminal Court has been unable to process more than two or three cases since 2002, at a cost of more than €1 billion. Despite that huge waste of resources drawn from the assessed contributions of Member States and the voluntary contributions of

the European Union, along with donations by Western non-governmental organizations, the Court is now requesting the United Nations to supply it with more resources in order to pursue its mandate in Darfur.

We have before us testimonies from around the world and from non-governmental organizations, including in particular Human Rights Watch, according to which the allegations of the Prosecutor of the International Criminal Court are lies. The only way to protect the victims is by ending the conflict, and it is no coincidence that the Comprehensive Peace Agreement and the Doha Document for Peace in Darfur have been ignored by the Prosecutor's Office. Frankly, when I heard the statement made by the representative of the United Kingdom, I could not believe her description of the situation in Darfur, which we monitor consistently and constantly. As the United Kingdom's former Foreign Secretary Robin Cook remarked, the Court was not established to prosecute any British or other Western official. That is what he said. Unfortunately, and in response to what we have heard from some Council members, this is our message to the conscience of the international community. There can be no graver insult than this position of the Court, which has persisted in its practices from 2002 until today.

Finally, the Prosecutor's report contains many gross references and transgressions regarding the practice of addressing the United Nations and the Security Council, particularly in paragraphs 12 and 45, which refer to the failure of the Council and its inability, inaction and loss of credibility in its attempt to alienate my country. I call on the Council to take whatever action it deems appropriate in that regard.

Members of the Council have also witnessed to what we in the Permanent Mission of the Sudan have gone through as the Prosecutor of the ICC has tried to muzzle and threaten us with litigation. We are still curious to know on what basis the Court could legally evaluate what we are doing to defend the symbols of our sovereignty, our unity and our territorial integrity within the framework of multilateral diplomacy, in which we have engaged in with a view to maintaining peace and stability with the conclusion of agreements aimed at restoring peace in our homeland, including the Comprehensive Peace Agreement of 2005, the Abuja Agreement and the Doha Document, and all that we have done to honour the letter and spirit of our obligations under international law, in accordance with the duties and rights stipulated therein.

**The President:** The representative of the United Kingdom has asked for the floor to make a further statement.

**Ms. Mulvein** (United Kingdom): I simply wish to point out, in response to the statement made by the representative of the Sudan, that the Court is in fact carrying out a preliminary examination into the United Kingdom's activities in Iraq, and that the United Kingdom is fully cooperating with the Court in relation to that preliminary examination. We do not accept that the Court is simply targeting African States. The Court is not targeting States as such at all. It is carrying out the mandate conferred on it by the Rome Statute and in the case of referrals by the Council.

**The President:** There are no more names inscribed on the list of speakers.

*The meeting rose at 12.15 p.m.*