



# Security Council

Seventy-first year

**7833**<sup>rd</sup> meeting

Tuesday, 13 December 2016, 10.20 a.m.

New York

*Provisional*

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*President:* Mr. Gasso Matoses/Mr. Oyarzun Marchesi . . . . . (Spain)

*Members:*

Angola . . . . .	Mr. Gimolieca
China . . . . .	Mr. Shen Bo
Egypt . . . . .	Mr. Aboulatta
France . . . . .	Mr. Lamek
Japan . . . . .	Mr. Akahori
Malaysia . . . . .	Mrs. Adnin
New Zealand . . . . .	Mr. Van Bohemen
Russian Federation . . . . .	Mr. Zagaynov
Senegal . . . . .	Mr. Ciss
Ukraine . . . . .	Mr. Yelchenko
United Kingdom of Great Britain and Northern Ireland . .	Ms. Mulvein
United States of America . . . . .	Ms. Coleman
Uruguay . . . . .	Mr. Bermúdez
Venezuela (Bolivarian Republic of) . . . . .	Mr. Suárez Moreno

## Agenda

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

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*The meeting was called to order at 10.20 a.m.*

### Adoption of the agenda

*The agenda was adopted.*

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

**The President** (*spoke in Spanish*): 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 Ms. Bensouda.

**Ms. Bensouda:** I thank you, Mr. President, for this opportunity to present my Office's twenty-fourth report on the situation in Darfur, pursuant to resolution 1593 (2005).

Six months have passed since my last report to the Council (see S/PV.7710), and indeed nearly a decade has passed since the first warrant of arrest was issued by the International Criminal Court (ICC) in the situation in Darfur. As I present this twenty-fourth report before the Council today, it is with immense regret that I acknowledge once again that all five suspects against whom warrants of arrest have been issued by the International Criminal Court in this situation remain at large.

As the longing for justice of the victims of Rome Statute crimes in Darfur remains unfulfilled, the suspects Mr. Omar Al-Bashir, Mr. Abdel Hussein and Mr. Ahmad Harun continue to occupy high-ranking positions within the Government of the Sudan without subjecting themselves to the scrutiny of the law so that their guilt or innocence can be established. What is more, Mr. Ali Kushayb continues to be active in the Government of the Sudan's aligned militias operating in Darfur, while another suspect, Mr. Abdallah Banda, also remains at large in the Sudan.

Time may lapse, but time does not erase the fact that serious crimes have been committed in Darfur, resulting in the untold suffering of victims. And time will not

change the fact that those five men stand accused of multiple crimes against humanity and war crimes, and additionally, in the case of Mr. Al-Bashir, genocide. Those constitute the world's most serious crimes. We must ensure that time also does not erode this fact in our memories, nor our obligations to hold those responsible for those egregious crimes accountable.

Let me recall by way of a few examples the gravity of the crimes. It is alleged that between August 2003 and March 2004 in the town of Mukjar, West Darfur, over 70 men were summarily executed after being detained and tortured by the Janjaweed and the Sudanese Army. In that same period, women and girls were raped and sexually assaulted. Civilians were attacked, forcibly expelled from their homes and herded into camps for internally displaced persons.

In an attempt to stop the violence and restore peace, the African Union (AU) deployed a peacekeeping operation in Darfur. Yet despite their protected status, in September 2007 rebel forces under the command of Mr. Banda are alleged to have attacked and murdered AU peacekeepers at their base in Haskanita, including one peacekeeper from a State that is currently a member of the Council. The courageous women and men who risk their lives in international and regional efforts to maintain peace deserve not only our respect and admiration, but also the best protection we can afford them. That protection surely includes holding those who target and attack peacekeepers accountable for such crimes.

Those are a just a few illustrations of the many crimes I am trying to prosecute as a result of the referral from the Security Council — crimes that the Pre-trial Chamber of the International Criminal Court have determined there are grounds to believe were committed by the Darfur suspects.

I refer to those crimes because it is critical that we do not lose sight of the ultimate purpose of these half-yearly briefings. These briefings should be more than a simple routine in fulfilment of a prescribed timetable. They should be seen as an opportunity for dialogue and an exchange of views between my Office and the Council on how best to achieve the objectives of resolution 1593 (2005), so that independent and impartial justice can be delivered to the Darfur victims.

As my report makes clear, the Rome Statute system has two essential pillars, namely, a judicial pillar, provided by the International Criminal Court, and an

execution and enforcement pillar, provided by State parties, and in the context of the Darfur situation, also the Council. The Office's reports are intended not only to provide relevant updates, but also to galvanize and mobilize the Council to enforce the obligations created by resolution 1593 (2005) and the Rome Statute legal framework.

Resolution 1593 (2005) was intended to enable my Office to establish the truth and deliver justice to the victims of Rome Statute crimes in Darfur. Instead, as time passes, ICC fugitives continue to travel across international borders unimpeded by the failure of the Sudan, other States, including — I regret to say — some States parties, to enforce the Court's arrest warrants.

A further aggravating factor is the Council's inaction. It is no surprise then that victims and witnesses of the Office are slowly but surely losing faith in the process of international criminal justice in Darfur. We must ask ourselves some tough but honest questions. What are we to say to victims who continue to suffer in Darfur, to the individuals who have uprooted their lives to be witnesses and had the courage to tell their story? How can we maintain their trust in the judicial process when they continue to observe Mr. Al-Bashir and other suspects traversing the globe with impunity? Victims, including some I have met with personally, are puzzled and dismayed by the Council's lack of action.

It is almost eight years since the Pre-Trial Chamber of the International Criminal Court issued the first warrant of arrest against Mr. Al-Bashir. Yet during each reporting period, Mr. Al-Bashir travels to different States, attending events ranging from presidential inaugurations to international sporting events. According to my Office's information, Mr. Al-Bashir has crossed international borders on 131 occasions since March 2009, and on 14 occasions to State parties and on 117 occasions to non-State parties. His movements are traceable. The world knows where he is, where he travels to — often in advance, from the media. There is ample opportunity for Mr. Al-Bashir to be apprehended — if the political will exists among States, and indeed the Council. As I stated to the Council in June, the lack of action by this organ has emboldened States to continue to host Mr. Al-Bashir. It also emboldens the Darfur fugitives to travel, as demonstrated by a recent visit by Mr. Al-Bashir, together with Mr. Hussein, to a non-State party. This open display of impunity undermines resolution 1593 (2005) and the credibility of the Council.

The legal position regarding the obligation of States parties to arrest and surrender Mr. Al-Bashir should he travel to their territory could not be clearer. As Pre-Trial Chamber II stated in its non-compliance decision of 9 April 2014,

“[n]owhere in any decision issued by the Court is there the slightest ambiguity about the Chambers' legal position regarding Omar Al-Bashir's arrest and surrender to the Court, despite the arguments invoked relating to his immunity under international law”.

As the Council will recall, South Africa failed to arrest Mr. Al-Bashir during his visit in June 2015. On 8 December 2016, the Chamber issued a decision to convene a public hearing, to be held on 7 April 2017, in relation to a possible finding of non-compliance for South Africa's failure to arrest and surrender Mr. Al-Bashir to the Court. The Chamber has not only invited South Africa and my Office to make written and oral submissions, but has also invited the United Nations to attend the hearing and be heard. That opportunity will allow the United Nations to set forth its position on non-compliance with Security Council referrals to the Court and the role to be played by the Security Council in non-compliance proceedings. The Chamber further invited all interested parties to provide any relevant submissions should they wish to do so.

More recently, the Court found States parties Uganda and Djibouti in non-compliance for failing to arrest Mr. Al-Bashir during visits to those countries in July of this year, and referred the matter to the Council. In those decisions, the Court emphasized the critical role of the Council when non-compliance findings are referred to it. Specifically, it stated,

“[i]n the absence of follow-up actions on the part of the Security Council, any referral to the Court under Chapter VII of the Charter of the United Nations would become futile and incapable of achieving its ultimate goal of putting an end to impunity”.

I can only underscore the necessity of the Council taking swift and concrete action to ensure compliance with all arrest warrants against the fugitives in the Darfur situation. That includes action against the Sudan for its continued and open defiance of the Court's orders and resolution 1593 (2005). The Pre-Trial Chamber has now issued 13 decisions finding non-compliance and/or requesting for appropriate action to be taken against the Sudan and States parties for failing to arrest Mr

Al-Bashir and other fugitives. At a minimum, the Council should consider referencing those decisions in a separate draft resolution, as has been done in the Libya situation when this organ adopted resolution 2213 (2015).

It is not enough for Council members to continue calling for support for the Court. Such calls have to be matched with concrete action. In that regard, serious consideration should be given to New Zealand's recommendation on 9 June. New Zealand stated that, when a finding of non-compliance is received, the Council should consider using the tools at its disposal, such as a draft resolution, statement, letter or meeting with the country concerned. And let us not forget that the failure to execute warrants of arrest is not limited to the case of Mr. Al-Bashir. To date, the ICC arrest warrants against Mr. Harun and Mr. Kushayb have remained outstanding for almost 10 years, against Mr. Hussein for almost five years, and against Mr. Banda for a little more than two years.

I take this opportunity to call on all States to fully cooperate with the Court in the arrest and surrender of suspects against whom ICC arrest warrants have been issued. Allowing suspects to travel across international borders with impunity not only severely undermines the Council's credibility and that of the Court but equally erodes public confidence in our common responsibility to end impunity for the world's most serious crimes, as well as our ability to ensure that victims attain the justice they so rightly deserve.

In the face of the failure to arrest the Darfur suspects, it is no surprise that allegations of the commission of new crimes under the Rome Statute continue to be reported in Darfur. According to the information that my Office has obtained, hundreds of civilians have been reportedly killed since April 2016. The area of Jebel Marra continues to be one of conflict and instability, and that has a dire impact upon civilians. Since June, there have been new clashes between the Government of the Sudan and the Sudan Liberation Army/Abdul Wahid faction in Jebel Marra, resulting in aerial bombardments by the Government. Approximately 80 civilians were allegedly killed as a result of these bombardments, mainly in Jebel Marra.

Moreover, as the Council is aware, the African Union-United Nations Hybrid Operation in Darfur (UNAMID) reported on 1 July that women and girls continue to suffer from sexual and gender-

based violence, including conflict-related violence. Particularly worrying is the recent, and as yet unconfirmed, allegations by Amnesty International that the Government of the Sudan may have deployed chemical weapons against civilians during several attacks on Jebel Marra over the course of 2016. It is alleged that 200 to 250 people, including many children, may have died from exposure to chemical weapons. My Office is taking the steps that it can to verify whether the allegations are true. I note that the Government of the Sudan has denied the claims, and to date both the Organization for the Prohibition of Chemical Weapons and UNAMID have not come across evidence that supports those claims.

However, it must also be noted that the Government of the Sudan severely restricts access of UNAMID and other organizations to the Jebel Marra region. Denying access to the United Nations, the African Union and other international humanitarian actors prevents aid from getting to the victims and internally displaced persons, and potentially enables the parties to the conflict to cover up crimes against civilians committed in the conflict zones. It is imperative for the Government of the Sudan to facilitate access to Jebel Marra. Consistent with its policy of total non-cooperation with the Court, the Sudan also denies access to my Office to prevent it from investigating alleged crimes.

I also feel compelled to say a few words about resources. With the Office's multiple situations and cases, it will be increasingly difficult for the Office to allocate needed resources to the Darfur investigation in the coming year given the recently approved 2017 budget of the Court. Nevertheless, despite limited resources, the total lack of cooperation by the Sudan and the inability to investigate in Darfur, my Office continues to conduct inquiries and investigations. The team assigned to the Darfur situation has interviewed additional witnesses since my previous report and obtained further evidence regarding not only previous crimes, but also allegations of current crimes. Further efforts are being made to identify potential witnesses. Overall, despite many challenges, my team continues to make progress. The support of the Council in obtaining additional funding from the General Assembly would significantly increase the investigative capacity of my team.

On every occasion that I report to the Council on the situation in Darfur, I am forced to voice my concerns about the very same challenges, the sum total of which

amounts to justice still eluding the victims in Darfur. I wish I could be here today to inform the Council and the victims that the judicial process has significantly advanced. But I cannot. As long as the Council does not take direct action to induce the Sudan and other States to execute the arrest warrants, I will likely be here next June delivering the same message. The lack of progress must weigh heavily on our collective conscience and must not be allowed to continue.

I end on this point, and I ask the members of the Council to consider it carefully: it was a watershed moment for international criminal justice when the Council voted in favour of referring the situation in Darfur to the International Criminal Court. The referral signalled to the world and to the victims the Council's determination to fight against impunity and foster justice and accountability in Darfur. That determination must guide the Council today as it did then. I ask the Council to give new life to resolution 1593 (2005) by giving my Office the support that it needs in order to advance its investigations and prosecutions in the Darfur situation. For the sake of the victims in Darfur, the members of the Council must break the current impasse. Under the critical watch of history, we must not allow "never again" to ring hollow and taunt the memory of the victims in Darfur. To be sure, the world yearns to see the Council employ its authority with confidence and conviction in full support of international criminal justice. This body's effective follow-through in the Darfur situation is the litmus test of the Council's ability to fulfil that promise.

**The President** (*spoke in Spanish*): I thank Ms. Bensouda for her briefing.

I shall now give the floor to the members of the Security Council who wish to make statements. I would like to remind speakers that, if possible, they should limit their statements to no more than five minutes. After five minutes the speaker's microphone will start blinking. The Council's agenda today is very full and intense, so I would request that speakers with long statements give a condensed version in the Chamber and circulate the full text to the other members separately.

**Ms. Mulvein** (United Kingdom): I would like to begin by welcoming the Prosecutor of the International Criminal Court (ICC) back to the Security Council and by thanking her for her briefing today. The United Kingdom is grateful for her twenty-fourth report,

and we thank her and her Office for their continuing investigation of the situation in Darfur.

The United Kingdom supports the ICC in its vital work of challenging impunity and ensuring accountability for those who bear the greatest responsibility for the most serious crimes of international concern. It is a tragedy that crimes such as these continue in Darfur. The Prosecutor's report notes that lately crimes have decreased, but we have still seen worrying reports of serious violations of international humanitarian and human rights law, notably in Jebel Marra. We remain particularly concerned about reports of attacks on civilians by the rapid support forces and other militias. We call on all the parties to end violence against civilians, violations of international humanitarian law and violations and abuses of human rights.

The United Kingdom welcomes the signing of the African Union High-level Implementation Panel Roadmap Agreement by both the Government of the Sudan and the opposition parties, but we remain deeply concerned about the humanitarian situation in Darfur, where 2.6 million people are still displaced, with no solution for the root causes of their displacement. This year saw a spike in displacement in the wake of conflict in Jebel Marra that strained humanitarian actors' capacity to meet the needs of suffering Darfuri civilians, particularly in the face of obstacles to their access. Civilians continue to be the main victims of the ongoing instability, and the United Kingdom urges the Government of the Sudan to allow access throughout Darfur, including all parts of Jebel Marra. That will enable the Prosecutor to carry out her investigation and the African Union-United Nations Hybrid Operation in Darfur to fulfil its mandate to protect civilians and facilitate humanitarian assistance. There is an urgent need to address the gaps in the rule of law and accountability, which breed violence and instability, as witnessed in inter-communal clashes and widespread allegations of gender-based crimes and serious sexual violence against women.

We call on the Government of the Sudan to meet its obligations under resolution 1593 (2005) to cooperate fully with the ICC, execute outstanding arrest warrants and fulfil its international obligations. The United Kingdom is frustrated about the fact that fugitives from the Court, including President Al-Bashir and Mr. Hussein, have been able to travel unhindered to a number of States that are parties to the Court, and therefore under an obligation to arrest

and surrender them. Together with our international partners, we will continue to raise our concerns with the relevant Governments and make it clear that we expect compliance with the arrest warrants for all those indicted by the Court. Such non-cooperation with the Court weakens the rules-based international system.

We agree with the Prosecutor that the Council should play a more active role in the area of compliance, and we support effective measures to ensure that instances of non-cooperation with the Court are taken seriously. The United Kingdom believes that achieving justice for victims should be at the heart of the international community's response to mass atrocity violence. It is essential to ensure that fugitives from international justice do not enjoy impunity. We call on all States parties to the Court to cooperate with it and abide by their Rome Statute obligations. We commend the ongoing investigations of the Office of the Prosecutor, and welcome the fact that despite these challenges, real progress has been made and significant additional evidence gathered. We recognize that the investigations are complex and take place in very difficult circumstances.

In conclusion, the United Kingdom would like to take this opportunity to renew its commitment to supporting the Court both as a State party to the Rome Statute and as a member of the Security Council. We recognize the financial constraints that the Prosecutor's Office faces and respect her independence in deciding on the best use of those resources.

**Mr. Aboulatta** (Egypt) (*spoke in Arabic*): I would first like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for her briefing to the Security Council today on her twenty-fourth report, in implementation of resolution 1593 (2005).

In her report, the Prosecutor reviews a number of challenges and makes some comments about the Court's performance with regard to Darfur. It concludes with two fundamental requests to the Security Council, the first being that the Council, through the United Nations, facilitate financial support to the Court for its investigations on Darfur, and the second that it act to ensure that justice is done to a number of the accused. I would like to address the following points.

First, there is a united African position on dealing with the ICC on various issues related to the African continent, and it is reflected in a number of African Union (AU) resolutions, including resolutions 547,

586 and 590, adopted at its twenty-fourth, twenty-fifth and twenty-sixth sessions, respectively. Based on those resolutions, the AU stresses, among other things, that since it is committed to combating impunity in accordance with the African Union's Constitutive Act, the ICC's measures against President Omar Al-Bashir of the Sudan should be suspended.

Secondly, successive resolutions adopted by the African Union have urged the Security Council to withdraw its referral of the situation in Darfur to the ICC and have expressed deep concern about the fact that for a number of years now the Council has not taken into consideration the African Union's calls on the matter.

Thirdly, in the light of African States' reservations about the Rome Statute in particular, the Court should not take any measures that could affect peace, security, stability, sovereignty or territorial integrity in African States. At the same time, it should respect the norms of international law pertaining to the immunity of Presidents and high officials during their terms of office.

Fourthly, it should reject any measures to be taken against any African States based on their non-compliance with the Rome Statute or non-cooperation with the provisions of resolution 1593 (2005) through a refusal to arrest President Al-Bashir or to hand him over to the ICC, which is a commitment on the part of African Union member States in accordance with AU resolutions and its Constitutive Act.

**Mr. Van Bohemen** (New Zealand): I want to thank Prosecutor Fatou Bensouda for her report and briefing. I commend her for the candor of her remarks and for the challenge that she has made to the Security Council.

New Zealand has long supported the need for an effective international accountability framework. Our experience on the Council over the past two years has reinforced our view that, without an effective accountability mechanism, too many of the conflicts that wind up on the Council's agenda will never be adequately resolved. Rather, they will flare up as people will react to the unaddressed injustices that they will have suffered.

The International Criminal Court (ICC) has an important role in that framework. It provides the international community with an important tool for ensuring that serious international crimes do not go

unpunished. The Council's ability to refer situations to the International Criminal Court plays a vital role. At the same time, the Council needs to be very careful that it is not using referrals as a political tool or as the only possible resource in an otherwise intractable situation. Such actions risk politicizing the Court, and can prolong both the conflicts concerned and the process of seeking accountability. Moreover, when referrals are made, they need to be accompanied by a clear commitment to providing the Court with the support, cooperation and resources it needs to discharge its mandate.

The need for sustained follow-up is particularly evident in the case of the Council's referral of the situation in Darfur. The Prosecutor's twenty-fourth report on this issue makes for depressing reading. The Prosecutor's briefing today has underlined the bleakness of the situation. Little has improved in the past six months. All five ICC indictees remain at large. Civilians in Darfur continue to suffer from the shocking consequences of conflict. If confirmed, the recent reports of the use of chemical weapons would represent yet another crime against the people of Darfur. We know that the environment for the ICC in taking forward the Council's Darfur referral remains extremely challenging.

Resolution 1593 (2005) requires the Government of the Sudan to cooperate fully with the Court and the Prosecutor and to provide them with the necessary assistance. It also urges Member States to cooperate with such efforts. Those obligations are being ignored. There has also not been any meaningful accountability at the national or regional levels. The Government of the Sudan's continued non-cooperation with the Court amounts to non-compliance with Council resolutions and with its obligations under the Charter of the United Nations. And yet the Council has not responded to any of the 13 findings of non-compliance referred to it in any meaningful way.

Not every member of this Council is a party to the International Criminal Court. But we all share a common interest — and indeed a responsibility for — in ensuring compliance with the Council's decisions. When that is absent, the credibility and effectiveness of this institution are undermined, and the message is sent that Council decisions can be ignored with impunity. That should be of concern to all those who value the role, legitimacy and authority of this organ. As the Prosecutor reminded us this morning,

last year New Zealand made two proposals for action to address this situation.

First, we called for the Council to take a more structured approach in considering findings of non-cooperation. There is currently no consistent practice. In our view, the Council should, at a minimum, discuss any finding of non-cooperation with a view to determining which of the tools that it has at its disposal, if any, offers the most appropriate response. As Ms. Bensouda recalled, those options include the adoption of a formal draft resolution or statement, the dispatch of a letter or a meeting with the country concerned. To continue ignoring ongoing acts of non-compliance is neither productive nor credible. We urge Council members to take a more active and consistent approach in response to future reports of non-compliance, and we look forward to working with other Council members in the coming days on how to address to this most recent report.

Secondly, we also need to find a way through the current impasse in the Council's relations with the Government of the Sudan. While we recognize the challenges involved in doing so, there is a clear need for the Council to build a new relationship with Khartoum. We hope Council members will give serious thought as to how that might be achieved in the coming year.

There is no escaping the fact that referrals made by the Council have contributed to current tensions between the International Criminal Court and some of its African members. New Zealand recognizes the unique role of the ICC and the fundamental importance of preserving its judicial and prosecutorial independence. Equally, we know that we all stand to gain from more frank and robust engagement aimed at resolving key challenges facing the Court. That means honestly acknowledging concerns that have been raised by African State parties. It means fostering greater mutual understanding on those and other issues. It means identifying ways in which we can collectively address and strengthen the Court and end impunity. The Council needs to play its part in supporting such a dialogue. However, it goes without saying that dialogue does not mean forgetting our search for justice and ensuring accountability.

We hope that we will see emerge from these current tensions a strengthened and more productive relationship between the Council and African States

on matters relating to the International Criminal Court that are of mutual interest and importance.

**Mr. Yelchenko** (Ukraine): I would like to thank the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, for the updates on her Office's activities since June.

Ukraine remains deeply concerned about serious violations of international humanitarian law, indiscriminate killings and other crimes committed in Darfur. Gender-based violence, including ethnically motivated sexual crimes, continues to take place in Darfur as signalled by the relevant report of the Secretary-General. In our view, that warrants the special attention of the Security Council. Unfortunately, like previous reports, this report still notes that States have failed to arrest people sought after by the Court. Article 27, paragraph 1, of the Rome Statute provides that the Statute shall apply equally to all persons without any distinction based on official capacity. In particular, in an official capacity as a Head of State or Government, a member of a Government or Parliament, an elected representative or a Government official shall in no case exempt a person from criminal responsibility under the Statute.

It is well known that the Court does not possess any enforcement mechanism and can fulfill its mandate only in cooperation with States. Resolution 1593 (2005) includes a clear requirement for the Government of the Sudan to fully cooperate and provide any assistance to the Court. Yet the reality is that the Government of the Sudan has not responded to requests from the Court. The Court often gets those requests back unopened. Ukraine considers such a stance inappropriate and disrespectful to the Court. We call on the Government of the Sudan to provide any necessary assistance to the Court and the Prosecutor.

Irrespective of being party or non-party to the Rome Statute, all Member States should consolidate their efforts to ensure accountability and prevent grave crimes in Darfur and elsewhere from happening. Non-cooperation with the ICC in such situations is a violation of the Charter of the United Nations. Our common failure to bring to justice those responsible for violations of international humanitarian law and abuses of human rights can stimulate violence in the rest of the world.

Finally, in such turbulent times for the authority and activities of the ICC in Africa, Ukraine would like

to express its full support to the work of the Office of the Prosecutor of the ICC on this case, as well as other important cases. I again thank Prosecutor Bensouda.

**Mr. Shen Bo** (China) (*spoke in Chinese*): China has listened to the briefing of Prosecutor Bensouda.

Lately, the situation in Darfur has, on the whole, calmed down. The Sudanese Government is dedicated to maintaining peace and stability, pushing forward the political process and promoting economic and social development. China welcomes all of those developments.

The question of Darfur involves a host of factors — namely, political, security, development and humanitarian. As such, it requires integrated solution, of which the political process represents the basis. It is the key to the question of Darfur.

Thanks to the mediation by the African Union High-Level Implementation Panel, a road-map agreement was signed by the Justice and Equality Movement, the Sudan Liberation Army/Minni Minawi and other armed groups. The priority at hand for the international community is to support the implementation of the agreement by the Sudanese Government and the armed opposition groups, help them reach consensus on outstanding issues through negotiation, and at the same time urge the Sudan Liberation Army/Abdul Wahid, to participate in the peace process unconditionally, in a joint effort to seek a comprehensive political settlement of the question of Darfur.

The international community should take an objective and fair stance, respect the sovereignty, independence and territorial integrity of the Sudan, and play a constructive role in the political settlement of the question of Darfur.

China's position on the handling of the question of the Sudan by the International Criminal Court (ICC) remains unchanged. We welcome the fact that the African Union has set up a council of ministers to deal with the ICC's handling of the question of the Sudan. We support the legitimate concerns of the African Union and the Sudanese Government on the handling of the question of the Sudan by the ICC. Those legitimate concerns must receive adequate attention.

**Mr. Bermúdez** (Uruguay) (*spoke in Spanish*): I wish to thank the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, for her comprehensive presentation of the twenty-fourth report on the activities of her Office on the situation in Darfur,

in accordance with the provisions of resolution 1593 (2005). We believe that such transparent and frank reports give added value to the consideration of issues falling within the purview of the Security Council.

Uruguay sees this as a timely opportunity to reiterate its full support for the role of the International Criminal Court (ICC) as an institution created to strengthen the rule of law at the international level by bringing to justice those responsible for the most serious violations of the rights common to all humankind. In this vein, we call once again on States Members of the United Nations that are not yet parties to the Rome Statute to join it, which will contribute to its universalization and thus help to fight impunity and defend victims of heinous crimes, which pose a serious threat to peace and security for all humankind.

We deplore the fact that the situation around this issue has remained practically unchanged since June, when we last considered it (see S/PV.7710). Having heard the briefing of the Prosecutor a few minutes ago, we wish to express our dismay at the lack of cooperation of the parties to the ICC and the failure to observe and implement the Rome Statute. Uruguay, as a State party to the Statute, is concerned at all cases of lack of cooperation with the ICC. Here we would recall resolution 1593 (2005), adopted by the Council, which in its paragraph 2 states that the Government of Sudan and all other parties to the conflict in Darfur must cooperate fully with the Court and the Prosecutor, and also urges all States and regional and other competent international organizations to cooperate fully.

There is a shared responsibility between States that do not cooperate and the Council, which does not act to support and enforce compliance with its resolution 1593 (2005), in violation of the provisions of article 87 of the Rome Statute.

Uruguay is prepared to work to ensure that the Council plays a more active role in considering cases of lack of cooperation with the ICC and that arrest warrants are complied with, which is an indispensable condition for the Court to be able to fulfil its mandate. We are grateful for and deem valuable the proposals made by New Zealand that would enable concrete action on the part of the Security Council in this regard.

I wish to encourage and congratulate the Office of the Prosecutor for its work in investigating the crimes committed in Darfur, which without a doubt promotes the strengthening of the rule of law and the

establishment of a minimal basis for the international community to reject impunity in cases of flagrant violations of human rights.

**Mr. Lamek** (France) (*spoke in French*): I, too, should like to begin by thanking the Prosecutor for her report and for her presence here.

The goal of combating impunity, as set out in resolution 1593 (2005), remains as necessary as ever. The numerous acts of violence that the Prosecutor lists in her report remain unacceptable, and the reference to allegations of the use of the chemical weapons in the report, which of course must be investigated, should push the Security Council to ensure greater coherence and determination in the implementation of its own decisions. In that context, it is more important than ever that justice be done and guilt assigned so as to prevent and deter any recurrence of such acts. That is why France deplores the fact that the arrest warrants issued by the Court have not been executed.

The Council and the international community are fully aware of the decisions that need to be taken to restore stability and peace in Darfur.

First, the resolution of the conflict must be political. It must involve the Government and the rebel groups. We regret in that respect the absence of any genuine progress in establishing an inclusive process allowing a sustainable peace to be achieved. France supports the efforts of the African Union High-Level Implementation Panel to that end.

Secondly, the protection of civilians must be ensured. It is important to recall here that the primary responsibility for protecting the population lies with the Sudanese Government, and to call on all parties to the conflict to respect international law, in particular international humanitarian law. We regret that the Prosecutor's report once again lists restrictions on access for the African Union-United Nations Hybrid Operation in Darfur (UNAMID) as well as obstacles to its functioning. The Sudanese authorities must provide full cooperation so as to allow the Operation to discharge its mandate.

Thirdly, safe, immediate and obstacle-free humanitarian access to the civilian population and displaced persons must be guaranteed.

Fourthly, and finally, it remains key that the perpetrators of the crimes committed be prosecuted and brought to justice. France reiterates in this respect

the importance of the obligation for cooperation by all States parties to the International Criminal Court and by all States Members of the United Nations with the Court, in accordance with the resolutions adopted by the Council. Without such cooperation, the prosecution of the most serious crimes by the Court will remain a dead letter.

This obligation falls primarily on the Sudan, which must implement the arrest warrants against its nationals for crimes committed on its territory and cooperate with the Court, as demanded by resolution 1593 (2005). The States parties to the Rome Statute also have a key role to play with regard to their statutory obligation to cooperate with the Court and to execute arrest warrants when the persons concerned are present on their territory. We regret that in recent months this obligation has not been respected by certain States, and we are grateful to the Office of the Prosecutor for its follow-up on this major challenge.

France regularly reiterates, in the context of its bilateral relations with those States and with the Sudan, the importance it attaches to the fight against impunity and its support for the Court, and it calls on those States to uphold their international commitments in terms of cooperation with the Court.

In that context, the responsibility of the Council is clear, and it is two-pronged. Cooperation with the Court must be made effective, and it must be ensured that arrest warrants are executed. As the Prosecutor stressed, it is up to the Council to respond to cases of non-cooperation with the Court. In that regard, we are ready to consider modalities that would allow action by the Council.

It is also vital that the Assembly of States parties remain mobilized on cases of non-cooperation with the Court, as must international organizations. Here it is necessary to limit contacts with persons who are subject to arrest warrants to those who are deemed essential, in line with the policy of the Secretary-General as defined in his two directives of April 2013. France reiterates the importance of the pursuit by the United Nations as whole of the implementation of those directives and of the application of the relevant provisions of resolution 1593 (2005).

Finally, we should continue efforts to ensure a cessation of violence against civilians and the quest for an inclusive political solution. That is the only possible way to achieve peace and stability in Darfur in the long-

term. To that end, UNAMID has a significant role to play and must accomplish its mandate. It is essential that free, unrestricted access to the entire Darfur territory be granted to it. We will give particular attention to that point during the next UNAMID mandate extension.

**Mrs. Adnin** (Malaysia): I thank Ms. Fatou Bensouda for her briefing. We have taken note of the twenty-fourth report of the Prosecutor of the International Criminal Court submitted pursuant to paragraph 8 of resolution 1593 (2005) and the judicial activities of the Office of the Prosecutor since its previous report.

Malaysia remains concerned about the protracted conflict in Darfur, which has continued to bring about dire consequences in prolonging human suffering, the deterioration of the security and humanitarian situations and large-scale displacement of civilians in Darfur. Attacks on civilians, including sexual and gender-based crime, continue to be reported in Darfur. We wish to remind all parties to the conflict of their obligations under international human rights and humanitarian laws to refrain from all acts of violence against civilians and humanitarian and peacekeeping personnel.

Malaysia has always maintained that dialogue is the only way to achieve a resolution of the conflict in Darfur. In that regard, we welcome the signing of the Roadmap Agreement by the Government of the Sudan and the Justice and Equality Movement, the Sudan Liberation Movement/Minni Minnawi, the Sudan People's Liberation Movement-North and the National Umma Party on 16 March and 8 August, respectively. We furthermore commend the effort of the African Union High-Level Implementation Panel in achieving the Roadmap Agreement. The signing of the Roadmap Agreement marked an important step forward in the Darfur peace process. All parties must seize the opportunity presented by the Agreement, as its implementation offers a means to resolve their differences and address the protracted conflict in Darfur. To that end, Malaysia looks forward to the resumption of dialogue and urges all parties to intensify their efforts to reach a comprise on a cessation of hostilities, ensuring humanitarian access in the Darfur region and reaching a comprehensive and final political settlement.

At the same time, parties that have yet to join the Roadmap Agreement should be encouraged to do so urgently and to engage constructively in the dialogue. In order to achieve that, it is incumbent upon the Government of the Sudan to create an enabling

environment where trust and confidence can be built. In that respect, efforts by the Government of the Sudan to demonstrate compliance with the relevant Security Council resolutions and their commitment to hold those responsible for violations of international human rights and international humanitarian laws accountable would be the necessary prerequisite.

**Mr. Akahori (Japan):** I thank Prosecutor Bensouda for her report and briefing, which I have read and listened to carefully. On the occasion of the previous briefing in June (see S/PV.7710), we stated that we regretted that justice had not been achieved for the victims in Darfur, despite the efforts of the International Criminal Court (ICC). It is very regrettable that we must again repeat that today.

As the Prosecutor stresses, the ICC cannot fulfil its mandate without the cooperation of States. That is precisely why resolution 1593 (2005) required the full cooperation of the Government of the Sudan and all other parties. Japan urges the full implementation of the resolution to achieve justice in Darfur. A continued failure to implement resolution 1593 (2005) would undermine the credibility of the Security Council. Follow-up on non-compliance is called for. In that connection, this year, Japan, together with Australia, the Czech Republic, Peru and Senegal, and in close consultation with interested parties, prepared a toolkit to assist the States parties of the Rome Statute, explaining the various actions that can be taken in case of non-compliance with ICC. We hope that the toolkit will be a useful contribution in preventing and dealing with non-cooperation.

On a positive note, we are encouraged by the progress on the investigation and collection of evidence. We look forward to further progress during the next reporting period.

Progress in the political process is essential to bringing stability to Darfur and justice to the victims. Japan welcomes the Sudan's signing of the Roadmap Agreement in August, which the Council long called for. It is regrettable, though, that an agreement on a ceasefire has yet to be concluded. Japan hopes that both the Government of the Sudan and the armed opposition groups will engage constructively so that negotiations for a ceasefire can be concluded without further delay based on that framework.

We also welcome the extension of the unilateral cessation of hostilities by the Government of the

Sudan and armed opposition groups. The cessation of hostilities should be closely monitored, especially as the dry season begins. While the report notes that the level of violence seems to have decreased, the scale of civilian attacks still requires the attention of ICC.

The Prosecutor's report referred to allegations of the use of chemical weapons in Jebel Marra — that needs continued attention and follow-up. Unhindered fact-finding access should be provided.

**Mr. Suárez Moreno (Bolivarian Republic of Venezuela)** (*spoke in Spanish*): We are grateful for the briefing by Ms. Fatou Bensouda.

Our country strongly supports the Prosecutor's efforts to ensure justice and accountability in the fight against impunity, as well as to promote a comprehensive, transparent and effective justice system. More than 10 years have past since the adoption of resolution 1593 (2005), by means of which the Security Council referred the situation in Darfur to the Office of the Prosecutor of the International Criminal Court. However, little progress has been made with regard to its implementation.

With regard to the political situation, great strides have been made through the implementation of the provisions of the Doha Document for Peace in Darfur and thanks to the mediation efforts of former President Thabo Mbeki of the African Union High-Level Implementation Panel. Such progress, as stated in the Prosecutor's report, has led to a reduction in instances of violence on the ground. However, we share the Prosecutor's concern regarding sexual and gender-related violence in the armed conflict in Darfur, which make strengthening the rule of law difficult to achieve.

For our country, accountability is a *sine qua non* condition to achieve lasting peace in the Sudan. Hence, we insist that those who have violated international humanitarian law and human rights law within the context of the armed conflict in Darfur be brought to justice. That would contribute to not only breaking the prevailing cycle of impunity, but also to fostering confidence in the State institutions of the Sudan.

In that vein, we believe it would be worthwhile, *inter alia*, to encourage effective dialogue between the International Criminal Court and the African Union with a view to considering practical steps that would facilitate the work of the Prosecutor and the Court, including the possibility of taking action in the region

and achieving agreements based on mutual respect and full respect for international law. We believe that such cooperation would complement regional initiatives to fight impunity. And it would do so all the more at a time when the legitimacy and impartiality of the Court have been called into question by several countries of the region, including Burundi, the Gambia and South Africa, which recently decided to withdraw from the Court, which sits in The Hague.

With a view to supporting the work of the Prosecutor to ensure that justice and accountability are a reality, we also encourage the Court to assess the situation on the ground in an objective and impartial fashion. Its role in the impartial investigation of the actions of all parties to the conflict is of the utmost important to increase the credibility of such legal authority. To that end, the International Criminal Court must work in a balanced fashion, in favour of promoting justice and achieving a firm and lasting peace from a comprehensive and indivisible point of view. However, we are concerned by the attempts of some factions to politicize the work of the International Criminal Court, which affects the principles on which the Court is based, such as autonomy, independence, impartiality, transparency and objectivity.

The arrest warrant issued by the International Criminal Court against President Omar Al-Bashir undermines the right to jurisdictional immunity for Heads of State of those States that are not party to the Rome Statute. The process to suspend the jurisdictional immunity of a President in exercising his office so that he can be tried is a matter of course by judiciary of his country represents a procedure set out in the Constitution of the Republic of the Sudan. In that regard, we share the calls of the African Union to request a suspension of the Court's proceedings regarding the arrest warrant against the President of the Sudan. However, we call upon the Government of the Sudan, the competent regional authorities and neighbouring States to cooperate effectively with the International Criminal Court with respect to the arrest of those alleged suspects who do not enjoy jurisdictional immunity and who are currently being investigated by the Office of the Prosecutor for alleged crimes against humanity, war crimes and genocide and whose arrest warrants have been issued by the International Criminal Court in the case of the situation in Darfur.

In conclusion, we encourage the strengthening of cooperation between the International Criminal

Court and the Government of the Sudan, as well as by the countries of the region, in order to help to find a political solution to the conflict in Darfur whereby the objectives of peace and justice are achieved for the benefit of the Sudanese population, in accordance with international law.

**Ms. Coleman** (United States of America): We commend the Prosecutor and her Office for her deep dedication to the pursuit of justice for the victims of atrocity crimes in Darfur, even in the face of tremendous political and logistical challenges.

It is clear that the need for justice continues. In that regard, it is far too easy to miss the tremendous suffering of victims, especially when the tempo of conflicts in Syria, South Sudan and elsewhere has meant that the long-lasting conflict in Darfur can all too often slip off the front pages.

However, we should be alarmed that there has been far more attention of late paid to criticizing the efforts of the International Criminal Court (ICC) in Darfur than to seeking justice for the Sudanese victims of mass killings, widespread rapes and destruction of communities, which led this organ to refer the situation in Darfur to the ICC Prosecutor. We also remain deeply concerned that President Al-Bashir and others who face arrest warrants in the ICC situation in Darfur continue to be welcomed by certain Member States. The hundreds of thousands of victims of atrocities in Darfur who saw their loved ones injured or killed, their homes burned and their communities destroyed must see us stand with them. Justice can succeed if we persevere in focusing on the interests of victims and in supporting the institutions with a mandate to bring truth to light and power to account.

We have been reminded over and over again of that fact after turning Cambodia into a grave yard for almost 2 million people decades ago. Nuon Chea and Khieu Samphan will serve the remainder of their lives in prison for their crimes against humanity, and Hissene Habre, under whose rule 40,000 people were killed and others were subject to widespread sexual violence and forced disappearances and torture, is now serving his sentence in Senegal. In that vein, we are heartened by the many States that continue to refuse to welcome to their countries the individuals subject to ICC arrest warrants in the Darfur investigation, and we commend those who have spoken out against President Al-Bashir's continued travel.

There is a path forward for a peaceful, stable future in the Sudan. A comprehensive peace process that addresses the political, security and humanitarian issues at the root of the Sudan's conflict is critical. We welcome the recent decrease in fighting in many parts of Darfur and the announcements that the Government and three of the four largest armed groups in the Sudan have committed to extend their cessation of hostilities through the dry season. We call on the Sudan Liberation Army-Abdul Wahid faction to do the same. It is critical that the African Union-United Nations Hybrid Operation in Darfur have access throughout Darfur to ensure that any alleged violations of the cessation of hostilities can be investigated.

Ultimately, accountability for the atrocities committed in the Sudan is essential for building adherence to the rule of law and breaking the cycle of impunity, where past crimes beget future crimes. Instead, justice can give us a different path of breaking that cycle of impunity and restoring dignity to victims and their families through a public acknowledgement of the gravity of the wrongs done to them. Now is a time for all of us to recommit to the pursuit of justice in the Sudan.

**Mr. Gimolieca** (Angola): I thank Prosecutor Fatou Bensouda for her report.

As a member of the African Union (AU), Angola reiterates its commitment to the fight against impunity, in accordance with the Constitutive Act of the African Union, and aligns itself with the African Union decision on the International Criminal Court, adopted at the Kigali Summit in July.

We welcome the activities of the Office of the Prosecutor related to monitoring and investigating crimes. However, we do not welcome the fact that a whole chapter of the report is based on allegations and reports from that source, and is not based on investigations conducted by the Court. Some of those allegations have been challenged by the Government of the Sudan, and have not been confirmed by the Department of Peacekeeping Operations. That can potentially affect the report's credibility.

Angola will uphold the position of the African Union on that issue, while advocating for dialogue as the only solution to adverse political disputes in Darfur, the Sudan, Africa and all over the world.

**Mr. Zagaynov** (Russian Federation) (*spoke in Russian*): We have taken note of the twenty-fourth report of the Prosecutor of the International Criminal Court (ICC) on the investigation of the situation in Darfur.

First of all, we are rather taken aback by the demands made to the Security Council during the so-called follow up on the situation in Darfur. We consider such attempts to lecture the Council to be inappropriate. Even among States parties to the Rome Statute there has been no unity when carrying out certain ICC arrest warrants. In particular, certain members of the African Union have repeatedly pointed out that requirements of the ICC in a number of cases are at odds with the commitments derived from international legal norms regarding the immunity of State officials.

Our delegation has always been considerate of that position. However, certain States, as well as the Court itself, have preferred to exert pressure on African countries, instead of taking on board their concerns. In the light of that, the recent decision by a number of countries to withdraw from the Rome Statute is no surprise. The political and legal rationale for those steps is understandable and should be respected. That again vindicates the criticism that is increasingly been aimed at the work of that legal body.

The report of the Prosecutor again raises the issue of the resource support for the Court from the United Nations. In that regard, we would like to reiterate once more that the main initiators of transfer by the Security Council to the ICC of the situation in Darfur, and in Libya, were certain States parties to the Rome Statute and of the Prosecutor, who should have recognized the financial implications of such a step. Attempts to shift that burden onto the United Nations are unjustified.

As to certain factual elements in the report, it rightly notes the significant decrease in the levels of violence in Darfur recently. According to the United Nations, the situation in four of the five states is relatively calm. Thanks to the efforts of the authorities, the number of inter-communal clashes has fallen, as has the crime rate in towns. The exceptions to that are various parts of Jebel Marra, in central Darfur, where there is continued resistance from the Sudan Liberation Movement-Abdul Wahid faction, which has rejected any possibility of dialogue with the Government.

We should also recall that the Panel of Experts of the Security Council Committee established pursuant to resolution 1591 (2005), concerning the Sudan, has

confirmed Sudanese rebels' violations of international humanitarian law, including the recruitment of child soldiers. Nevertheless, the report places particular emphasis on assertions about the allegedly ongoing attacks on civilians by Government forces. The ICC's one-sided assessments, which are exclusively directed at the legitimate Sudanese authorities, can hardly improve that judicial body's credibility or contribute to the reconciliation process.

The same can be said of the Prosecutor's assertions, borrowed from Amnesty International, on the use of chemical weapons in Darfur. It is well known that they are based on phone and Internet interviews with unnamed people, as well as photographs and videos. We are in agreement with the competent opinion of the Organization for the Prohibition of Chemical Weapons that at the moment we cannot draw any conclusions from this report in the absence of further information and evidence. The African Union-United Nations Hybrid Operation in Darfur, whose representatives are in constant contact with thousands of displaced persons from Jebel Marra, has not confirmed those rumours.

In our view, if chemical weapons were being repeatedly used in the area, it would be impossible to hide the fact. The accusations have also been categorically rejected by Khartoum. The Sudan acceded to the Convention on Chemical Weapons in 1999 and has officially announced that it is complying with its obligations by refraining from producing or storing chemical weapons on its territory.

In conclusion, and speaking not just to the Darfur investigation but more generally, we would like to emphasize once again the importance of reaching a delicate balance between the interests of dispensing justice and of achieving sustainable peace and a stable situation. The two problems are equally important, and an integrated, balanced approach is needed to solve them.

**Mr. Ciss** (Senegal) (*spoke in French*): The Senegalese delegation would like to thank the Spanish presidency for organizing today's briefing, and to welcome Prosecutor Fatou Bensouda. We are grateful for her report and her briefing on the progress of her Office's investigations and proceedings in Darfur, in compliance with resolution 1593 (2005). Senegal would like to reiterate to her its unwavering support.

Senegal recognizes the role and importance of the International Criminal Court in a world where millions

of victims of atrocious crimes long for justice. The fight against impunity and respect for the rule of law are fundamental principles in which we firmly believe and that are anchored in the Constitutive Act of the African Union. We consider respect for human rights and their universal nature to be particularly important.

In our view, not only are the requirements of peace and of justice not incompatible, they actually go hand in hand. That is why we work to satisfy the demands of the victims in Darfur for justice and reparations, while also aspiring to achieve peace through dialogue. And that is why my country, while upholding the principles of responsibility and justice, believes firmly that it is essential to go through dialogue and reconciliation if a comprehensive and lasting peace is to be achieved. Incidentally, that is the position of the African Union when it calls for the restoration of peace and justice in Darfur.

The Prosecutor's report that we are considering today describes alarming levels of attacks, including sexual and gender-based crimes, on civilians in Darfur. My country condemns all acts of violence against civilian populations and urges all stakeholders to take the measures needed to ensure that those responsible for such acts are punished. Senegal remains deeply concerned about the restrictions that the African Union-United Nations Hybrid Operation in Darfur is dealing with in carrying out its mandate.

On another subject, we believe it will be difficult for the Office of the Prosecutor to fulfil its mandate without an adequate budget. That is why my country will continue to work to ensure that the Assembly of States Parties to the Rome Statute provides the Court with the means necessary for its efforts to succeed. My delegation would also like to recall that it is the Security Council's duty to ensure that the United Nations makes the proper financial contribution for the cases that the Council refers to the Court.

There is no need to recall that the situation in Darfur continues to be a significant challenge for both the African Union and the rest of the international community, and that it requires greater efforts on the part of all of us. A definitive solution to the crisis requires participation by the Sudanese parties themselves, who are called on to create the conditions for lasting stability in an open, comprehensive dialogue involving every sector of society. It is incumbent upon us to work to create security and political conditions

that can enable the Sudanese to take charge of their peace process themselves. But the role and place of justice in that settlement cannot be ignored, for a sense of injustice is the principal source of instability. While the primary responsibility for ensuring access to justice belongs to the State, when justice is not to be found there, the victims are free to seek it wherever it may be found.

**The President** (*spoke in Spanish*): I shall now make a statement in my national capacity.

The founding Charter of our Organization affirms faith in fundamental human rights and in the dignity of the human person. It also establishes that Member States are obliged to comply with the Security Council's decisions. However, none of those assertions seems to apply to Darfur, and to a large degree it is the Council's responsibility to deal with that.

I wish to recall that 11 years have passed since the Council referred the situation in Darfur. We therefore reiterate our call to the Government of the Sudan to comply with the mandate in resolution 1593 (2005) and to cooperate with the International Criminal Court, in compliance with its obligations as a Member State. We would also like to remind States parties to the Rome Statute of the obligation to cooperate that they assumed upon ratification of the Statute.

While the decline in violence in Darfur is positive, the situation is still very far from satisfactory. The continuing clashes, especially in Jebel Marra; the persistence of violations of international humanitarian law and of violations and abuses of human rights; the continued obstacles to access for the African Union-United Nations Hybrid Operation in Darfur and humanitarian organizations; and the persistent climate of impunity are all unacceptable. We reiterate our call to all parties to join a peace process, which should be inclusive. We remind the Sudanese Government of its special responsibility to protect the population. We also reiterate our conviction that there can be no lasting peace without justice.

This is the last statement that my country will make in the Security Council when Ms. Bensouda is present, and I would like to reiterate Spain's commitment to the Court, which for my country is first and foremost a commitment to victims. It is clear that the Court's work with regard to Darfur has played a role in the crisis that has arisen thanks to the decision of three States parties to withdraw from the Rome Statute. Spain,

which last year enacted a law on immunities expressly guaranteeing respect for obligations arising from its membership in the Court, would like to reaffirm its readiness to participate in a constructive dialogue that can build bridges. The International Criminal Court is the best instrument we have for combating impunity in a world where respect for human rights and international humanitarian law is lacking, and where violations have reached intolerable levels. In that context, the Court is our last hope, and the last hope of thousands of victims.

After some 12 years without results, it is easy to give way to discouragement and frustration. But it is our obligation — that of members of the Security Council, of States parties and of Ms. Bensouda herself — to safeguard and continue seeking avenues for dialogue between the Council and the Court that would enable us to return to the path of cooperation. We owe it to the victims of Darfur. It is up to us to restore their confidence in the authority of law and justice.

I now resume my functions as President of the Council.

I give the floor to the representative of the Sudan.

**Mr. Mohamed** (Sudan) (*spoke in Arabic*): I hope that I will be given an opportunity to make my statement in response to the report of the Prosecutor of the International Criminal Court (ICC) and her briefing to the Security Council.

I congratulate Spain on its presidency of the Council this month and thank its predecessor for the excellent leadership last month. Again, I also thank the President for this opportunity to address the Council in response to the report of the Prosecutor of the ICC.

This is the twenty-fourth report delivered since 2005 pursuant to resolution 1593 (2005), which provides for two reports per annum, thereby leaving the ICC and its Prosecutor with no option but to repeat a pointless monologue about the deterioration of conditions in Darfur and compelling the Prosecutor to fake blatant lies in order to rally Council support on an issue that has long been settled — first, by the conclusion of the comprehensive agreement, which was welcomed by the Council in resolution 2003 (2011), and, secondly, by the agreement's implementation across the board, whose completion was celebrated three months ago, in September.

In that regard, we should like to call the Council's attention to the records of the implementation follow-

up commission of the Doha Document for Peace in Darfur, which meets every six months. It is paradoxical that the Prosecutor also presents her report every six months, theatrically gearing up absurd presentations that are completely contrary to the facts cited by the commission, whose membership includes permanent members of the Security Council, in addition to the State of Qatar, neighbouring African States, the United Nations, the African Union, the League of Arab States and the European peace partners.

I should like to stress at the very outset that the Sudan is not a party to the Rome Statute of the ICC. Let me also state that that Court is not an organ of the United Nations, in spite of fervent attempts by some parties to paint it otherwise in the meetings of the Main Committees of the General Assembly. Again, I want to emphasize that the Sudan is not a party to the Statute nor to the ICC, in spite of such statements.

I would like to hand out two documents in English: one on the issue of access to all areas of Darfur and another on the fallacy of accusing the political leadership of genocide. They have been prepared on the basis of credible and well-documented international testimony, to which I would like to draw the Council's attention.

This last accusation is no different in nature from other erroneous accusation made by the ICC, but in this instance there is a strange urgency on the part of the Prosecutor and a suspicious keenness on the part of some international non-governmental organizations to manipulate this accusation in a bid to inflict as much political harm as they can on the Sudan and its existence and integrity.

Since 2005, reports of the Prosecutor of the ICC have repeatedly demonstrated an inclination to address the President of the Republic of the Sudan — who, as we have previously stated and as is enshrined in our Constitution, “personifies the sovereignty and authority of the State” — in an inappropriate and derogatory manner. That is inappropriate in general and unacceptable to us in particular. It is deplorable in the light of our national and human dignity, and indeed unprecedented in our history.

As evidenced by successive trivial reports, the ICC is completely disoriented. It is plagued by institutional failure and corruption. It has made an enemy of the Sudan and of the Sudanese Government in a manner completely unbecoming an institution that proclaims itself to be of the highest calibre at the international

level. We shall duly come to prove the fickleness of the foundations on which the ICC is built, foundations that are driving more and more nations and countries to withdraw from the Court.

The 2005 Interim Constitution of the Sudan is, in essence, a peace agreement, one adopted by consensus following the proclamation of the Comprehensive Peace Agreement signed that same year with South Sudan. That Agreement clearly and equally addressed both principles: justice and peace. Therefore, the Doha Document for Peace in Darfur is a compilation of virtually all the principles universally agreed upon for the voluntary return of refugees and internally displaced persons, for the implementation of the principles of transitional justice, and remedial measures for victims, ensuring the prosecution of human rights violators and providing for compensation and reparation to victims.

Guided by those principles, the Government of the Sudan established a special tribunal for the prosecution of crimes perpetrated in Darfur, and the Sudanese Department of Justice appointed a special public prosecutor for that very purpose. We have formally provided the United Nations and the Security Council with the statistics on the achievements of the tribunal.

We would like to draw the Council's attention to this year's report of the Joint Tripartite Commission, made up of the United Nations, the African Union and the Government of the Sudan, which states

*(spoke in English)*

“the Joint Working Group acknowledges the efforts of the state Governments and Prosecutor for Darfur Special Crimes Court to address the crimes committed during the conflict and restore law and order through the deployment of additional police, corrections and judicial human and material resources across the five states of Darfur, including legal advisers, prosecutors, legal aid assistants and family child protection units”.

*(spoke in Arabic)*

Although the report of the Prosecutor of the ICC stresses the significance of resolution 1593 (2005), which referred the situation in Darfur to the ICC, it has nonetheless deliberately ignored what I mentioned with regard to paragraph 5 of the same resolution:

*(spoke in English)*

“The Security Council also emphasizes the need to promote healing and reconciliation and encourages in this respect the creation of institutions, involving all sectors of Sudanese society, such as truth and/or reconciliation commissions, in order to complement judicial processes and thereby reinforce the efforts to restore long-lasting peace, with African Union and international support as necessary”.

*(spoke in Arabic)*

Contrary to arrangements by the Government of the Sudan to achieve justice and peace together, and the Security Council’s keenness to maintain that balance, the Office of the Prosecutor of the ICC issued policy papers in 2007 giving political interpretation to article 53 of the Rome Statute. The latter stipulates that the Prosecutor has the right to not — I repeat, not — proceed with an investigation if that is detrimental to the interests of justice, stating that such interests do not mean peace. The Prosecutor alone created a statute and imposed it on States parties to the Statute. That is very dangerous. It gives the Prosecutor discretionary political power to prematurely abolish peace initiatives and agreements.

The report presented to the Council contains many examples of inconsistency, contradiction and unworthiness. As we have previously stated with regard to the situation in Darfur, the ICC and its Prosecutor have become an adversary and judge both at the same time. According to some international law jurists, the ICC is a kangaroo court. The following are examples of those contradictions.

First, as we explained in our response to the previous report, the Court was transformed into a monitoring mission with a political agenda in Darfur, as opposed to a judicial body. The twenty-fourth report, submitted today, states in paragraph 25,

*(spoke in English)*

“[t]he Office of the Prosecutor continues to monitor” — I repeat, “to monitor” — “and inquire into current crimes allegedly being committed in Darfur”.

*(spoke in Arabic)*

It should be noted that this report relies on the reporting of mechanisms put in place by the Security

Council, such as the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and the Panel of Experts on the Sudan, and even on reports of non-governmental organizations. We have taken up various aspects of those reports in the Security Council, and disagreed with many of them. The members of the Council, as I have said, have themselves disagreed with many of the paragraphs in those reports. We have shown on numerous occasions the self-contradictions of those paragraphs, which render them invalid testimony before any credible judicial body.

Secondly, the same International Criminal Court, which refers cases of noncompliance to the Assembly of States Parties to the Rome Statute, refused to refer to that Assembly the case of its first Prosecutor, Luis Moreno Ocampo, who is alleged to have committed rape in 2006. It refused to refer it to the Assembly of State Parties. Furthermore, it ordered the destruction of incriminating evidence and approved the dismissal of Christian Palme, an employee in the Office of the Prosecutor, who came forward about the case of rape. Mr. Palme later contested his dismissal at the Administrative Tribunal of the International Labour Organization, which decided he should be compensated.

Thirdly, in paragraphs 18 and 35, the twenty-fourth report is cheaply appealing to emotions by shedding tears for the victims, knowing very well that justice for the victims is fully incorporated in the Doha Document for Peace in Darfur. I hope that the Council will look carefully at paragraph 35. It states that

*(spoke in English)*

“the Office will continue to do everything it can to deliver justice to the countless victims of Rome Statute crimes in Darfur”.

*(spoke in Arabic)*

The Court is ultimately political; it therefore is not qualified to achieve any kind of justice. In the 14 years since its establishment it has ruled on four — just four — cases, all of them concerning African nationals, after rejecting more than 9,000 other complaints.

Fourthly, certainly no one was surprised that the ICC hailed the report of Amnesty International concerning allegations that the Government of the Sudan, between January and September 2016, used chemical weapons in Jebel Marra in Darfur. In that connection, I would like to refer the Council to the statements by the Organization for the Prohibition of Chemical Weapons

(OPCW), to the fact that at its annual meeting it welcomed the report of the Government of the Sudan. In addition, the members of the OPCW renewed the Sudan's membership in the Executive Council of the OPCW for another two years.

I believe there is no need to concern the Council, or myself, with such vexations and fabrications. However, I am duty-bound to mention that the establishment of an international criminal court was advocated by the international Coalition for an International Criminal Court. The Court is indebted to Amnesty International, an organization that boasts in its statements that it pushed the Security Council in 2004 to constitute the International Commission of Inquiry on Darfur, whose report (see S/2005/60) was the basis for referring the situation in Darfur to the ICC. Amnesty International also prides itself on forcing the Court to rescind the decision of the Trial Chamber 1 that no crime of genocide was committed in Darfur.

We cannot entrust to the International Criminal Court, under its present Statute, with the important and noble goal of combating impunity for many substantial reasons. I will mention only three, since time is short.

First, the text of the Statute enshrines the inequality among those who are subject to its jurisdiction, because it differentiates among them according to their nationality and not by the evidence presented against them. Exceptions in the Statute are not implemented with regard to nationals of developing States. Moreover, referrals of cases on the basis of article 13 of the Statute

cannot, and do not, take place except for nationals of developing States — and African States alone.

Secondly, fully half of the budget of the Court comes from voluntary contributions from States and non-governmental organizations, and indeed even individuals, and those parties ultimately exercise control over the ICC.

Thirdly, the Court's policy papers, as well as its practices since 2002, have driven a wedge between the principles of justice and peace. They have suspended one of the most fundamental principles of international humanitarian law relative to internal conflicts, that being amnesty, and all of that results in the ongoing killing and violations of all forms, which brings us back, regrettably, to the hellish circle of impunity.

The African Union, as represented by the African Ministers of Justice, since 2009 has been seeking an answer to a fundamental question: Has the Rome Statute annulled the immunities enjoyed by officials according to international law? The African Union has yet to receive a reply. Furthermore, and regrettably enough, the African Union High-level Committee of African Ministers for Foreign Affairs, headed by the Ethiopian Minister for Foreign Affairs, which was mandated to meet with the Security Council, was not able to hold its agreed meeting in September. I will not go into the details of that regrettable episode, which was preceded by the contempt displayed by the ICC towards African States and Africans.

*The meeting rose at 11.55 a.m.*