



# Security Council

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New York

*Provisional*

<i>President:</i>	Mr. Kariuki . . . . .	(United Kingdom of Great Britain and Northern Ireland)
<i>Members:</i>	Albania . . . . .	Mr. Stastoli
	Brazil . . . . .	Mr. França Danese
	China . . . . .	Mr. Dai Bing
	Ecuador . . . . .	Mr. Pérez Loose
	France . . . . .	Mrs. Dime Labille
	Gabon . . . . .	Mrs. Onanga
	Ghana . . . . .	Mr. Korbich
	Japan . . . . .	Mrs. Shino
	Malta . . . . .	Mr. Camilleri
	Mozambique . . . . .	Mr. Afonso
	Russian Federation . . . . .	Ms. Zabolotskaya
	Switzerland . . . . .	Ms. Chanda
	United Arab Emirates . . . . .	Ms. Shaheen
	United States of America . . . . .	Mr. DeLaurentis

## Agenda

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

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*The meeting was called to order at 3.05 p.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 Mr. Karim Khan, 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 give the floor to Mr. Khan.

**Mr. Khan:** I thank you, Mr. President, for the opportunity you have given me today to once again brief the Security Council. I would also like to express my gratitude to the Permanent Representative of the Sudan for the opportunity that I had to meet with him yesterday.

It has now been 90 days since 15 April, when fighting erupted between the Rapid Support Forces (RSF) and the Sudanese Armed Forces. That conflict and engagement has spilled out of Khartoum to engulf much of the Sudan. It is certainly being felt by the people of Darfur. The simple truth is that as we in the Council and across the world are seeing increasing reports on the matter, we are in peril of allowing history to repeat itself — the same miserable history that compelled the Council in 2005 to refer the situation in Darfur to the International Criminal Court (ICC).

As we speak, there are women and children, the elderly and the young, fearing for their lives and living with uncertainty in the midst of conflict. As their homes burn, many do not know what the night will bring or what fate awaits them tomorrow. That is neither hyperbole nor polemic but the result of an objective assessment by myriad sources. Just today, the Office of the High Commissioner for Human Rights released a report detailing allegations of the killing of 87 ethnic Masalit allegedly by the RSF and members of their allied militia in West Darfur. We are investigating

those allegations. By any analysis, we are not on the precipice of a human catastrophe, but in the very midst of one. It is occurring. Based on my own analysis, it is my advice and my prayer that we act urgently and collectively to protect the most vulnerable. If the oft-repeated phrase “never again” is to mean anything, it must mean something here and now for the people of Darfur, who have lived with uncertainty, pain and the scars of conflict for almost two decades.

With respect to the role of my Office, I want to be very clear that our mandate pursuant to resolution 1593 (2005) is ongoing with respect to crimes within our jurisdiction, that is, the crime of genocide, crimes against humanity and war crimes. Any individual who is found to have committed any of those crimes within our jurisdiction will be investigated. Depending on assessments by the independent judges of the ICC, we will strain every sinew and leave no stone unturned to ensure that they are held accountable in fair and independent trial. We have already started investigating, as I said.

I want to send a clear message to all the belligerents, commanders and foot soldiers who have guns, or who believe that they have the power to do what they want, that intentionally targeting civilians, especially women and children, and their homes or businesses is a crime prohibited by the Rome Statute. The attacks on schools and on humanitarian supplies and facilities must cease, because the harm that such activities are causing is so profound that it goes beyond words. I think that reality deserves that we pause for thought and contemplate the lot of people who are not in rooms or in a Chamber such as this. This is a moment in which we should really bring together the principles of the Charter of the United Nations, the principles hard won at Nuremberg, the Rome Statute obligations and the authority of the Council itself, which made a determination in 2005 that such acts represented a threat to international peace and security. It applies not only in relation to acts committed in the Sudan. Any individual outside the Sudan who aids, abets, encourages or directs crimes that may be committed in Darfur will also be investigated. This is a moment that should bring some clarity in terms of where it is going, the legal options available and the moral and legal responsibility that we owe to people who feel invisible and have felt invisible for almost 20 years. They feel that the law and the pronouncements and resolutions of the Council are not

taken seriously or delivered on to protect or shield them as the Charter of the United Nations requires.

The investigations that we are looking at also encompass many allegations of crimes in West Darfur — looting and extrajudicial killings and the burning of homes — and in North Darfur. With regard to those allegations, I have already mentioned the report of the High Commissioner for Human Rights today, but they also emerge from other sources, such as the report of the Secretary-General (S/2023/355) on the United Nations Integrated Transition Assistance Mission in the Sudan (UNITAMS). I would like to take this opportunity to commend the excellent leadership and cooperation of Volker Perthes, as Special Representative of the Secretary-General, in the most recent period. I have given clear instructions to my Office to prioritize crimes against children and of sexual and gender-based violence. While I cannot vouch for the accuracy of the various reports that we have received at this juncture, we are already looking at new, imaginative and innovative ways to verify what is the truth and subject it to scrutiny.

I have said that during my term as Prosecutor, I will not apply for warrants unless there is a realistic prospect of getting a conviction. But God willing, we will ensure that justice is not merely spoken about in this Chamber but is felt, so that civilians and the vulnerable can see their rights vindicated in ways that they have not seen sufficiently in their lived experiences. Today I can also announce our launch of a new public campaign in which we are asking and encouraging civilians, members of the various groups and any other individual with information to provide it to my Office through a secure channel, using a portal that we have set up.

At this critical moment — and I think by any analysis, that is the blindest way we can put it — we need a very honest assessment. This outcome has been staring us in the face. It has been staring the Council in the face. It has been staring the Sudan in the face for an awfully long time. We could see it coming. The question is what we are going to do about it. This reality, the fact that children are rendered orphans, women are violated and buildings are burned, is the result of an unwillingness, over a significant period — despite the reports that I and my predecessors have brought before the Council, the work of the Office of the High Commissioner, the work of various United Nations organizations, and of UNITAMS in the more recent past — to give value to the accounts of the lived experiences of so many of

our Sudanese and Darfuri brothers and sisters. In my respectful view, it stems from a fundamental failure to recognize that justice is not simply required for upholding normative values and principles of public international law, or even to vindicate essential principles of the Charter. But for all those reasons, all those instruments speak to a fundamental reality that justice must be and is a foundation for any prospect of sustainable peace and real security.

That failure of recognition reflects a fundamental disregard for and breach of clear, repeated commitments that have been made to the people of the Sudan by their Government. One can go through a whole litany of instruments and promises made, but it can simply be reduced to two things, the unfulfilled Juba Peace Agreement of 3 October 2020 and the commitments made to myself and my Office by the Government of the Sudan, by dint of the memorandum of understanding signed on 12 August 2021.

That compels my Office to look at how it can more effectively render justice at this moment in a way that will not allow any errors of the past, obstruction or non-cooperation to sabotage the prospects for justice or render impotent the will of the Council, with the heavy responsibilities that are placed on it. By any measure, a failure to meet international legal obligations and the absence of any meaningful justice in the Sudan for the serious crimes committed in Darfur 20 years ago have sown the seeds that have grown into the weeds of woe that are now the misfortune of so many Darfuris. I remain open to engaging with all actors to prevent further backsliding into ever deeper violence. I have tried over the past months to engage, and we have received messages from the leadership of the various armed groups, the Government of Sudan and the RSF. And I will continue to make those efforts, but any engagement has two key conditions.

It is essential that those involved in the hostilities recognize, however late in the day, that they must uphold their obligations under international humanitarian law. There cannot be further excuses, prevarications and justifications for what is intolerable and unjustified — the targeting of humankind's most vulnerable. It is essential that those involved in the hostilities engage in genuine communication and meaningful cooperation with my Office, both in relation to the current hostilities that we are investigating and with respect to the previous crimes committed in Darfur. We will be redoubling

our efforts to make sure that we can penetrate any obstruction we may face.

As the sky darkens over Darfur, and indeed over the people of the Sudan, we must hold on to the light that justice can bring, not because of blind hope or faith, but steered by determination, focus and the willingness to make a decision to change things that we have seen in the past. And there has been hope. In the past six months, tremendous progress has been made in the ICC case of *Prosecutor v. Muhammad Ali Abd-Al-Rahman*. We have closed our case after presenting 81 witnesses who have been tested by the defence and heard by the judges of the ICC. That is a key milestone, and I would like to take the opportunity to commend my team — the men and women of my Office who have persevered, in very difficult circumstances, in discharging their responsibilities with honour and integrity, and extraordinarily efficiently.

The voices of victims have been heard. Recently, victims called by the legal representatives of the victims have been heard before the Court. For 20 years they have been yearning for an opportunity to present their views. One example is worth repeating because it speaks both to their misery of the past 20 years and to what is befalling them now. I would like to repeat the words of one witness, who said,

“I would like to say that we like justice, and we want justice. We want all those who turned our lives into humiliation and suffering and exhaustion to be held accountable. We want those who destroyed us to be held accountable. Those people destroyed our future and the future of our generations. And in this moment, I am presenting to you my voice and the voice of all Darfurian refugees present everywhere around the world, and I would like to tell you that we want peace. We want to return to our homeland. It is enough now.”

How could anybody be more eloquent, sincere and simple than that individual, who spoke understandable truths? He is right. It is enough now — by any benchmark or metric.

The power of that testimony and its tragic relevance today underlines the fact that the trial of Mr. Abd-Al-Rahman continues to make progress, despite all the difficulties and the current increased hostilities. And I am pleased that because of the excellent trial management of the judges of the ICC, this has been the most effective and efficient trial in

the history of the Court. But we must ensure that it can come to a conclusion. I call on the Government of Sudan to join me by providing every assistance to the defence, the legal representatives of the victims and the Court so that that trial can come to a final determination, following an assessment by the judges of the ICC.

But we need to show that we are delivering more than words and promises. We need to show demonstrable action. And as I have said, that is going to be determined not only by the potency and effectiveness of investigations — nor even by the issuance of arrest warrants if judges of the ICC scrutinize any applications we present and are compelled to issue such warrants — but we need to see actual justice in court to separate truth from fiction and to give confidence to the people of Darfur that their lives mean something at all, and that what took place is going to be justiciable.

As I have said repeatedly to the Security Council, I do not want these Council referrals to be never-ending stories. I have tried to engage with the Government of the Sudan with road maps and different options to ensure that justice in any forum is delivered in a way that can satisfy the objectives of the Council and the demands of justice. But if authors are intent on writing further chapters of despair and further pages of misery, we will not close this book. We will keep reading, and we will ensure to the best of our ability that there is justice and accountability. Because if we fail to deliver here, I think that the implications would be very severe, as we see in other situations. It would call into question the relevance of the Council.

And I make no apology in making my final remark. I am a Muslim, and many actors in this conflict, in both of the parties, proclaim to be Muslims. I recall not only their responsibilities under the Charter of the United Nations and resolution 1593 (2005), as well as their commitments with respect to Juba and in the memorandum of understanding they signed, but also in terms of the religion they profess to uphold, which is Islam.

To quote the Qur'an, which makes it clear,

“Be upholders of justice and witnesses of truth, even if it be against yourselves or against your parents, or the rich or the poor. If you distort justice, Allah knows all that you do.” (The Holy Qur'an, CXXXV:4).

There has to be a day of reckoning in this world. And that is another reason why I encourage each and every person, however high their status is in any party to a conflict, or any civilian, to speak the truth and to avail themselves of the opportunity now to take the hand of justice and allow there to be some accountability — the accountability that has been often promised and has not been delivered by the Government of the Sudan. I think that only if we work in that way of humility will we vindicate the promises we have now been making since 2005.

**The President:** I thank Prosecutor Khan for his briefing.

I shall now give the floor to those members of the Council who wish to make statements.

**Mrs. Shino (Japan):** I thank Prosecutor Khan for the thirty-seventh report on the situation in Darfur pursuant to resolution 1593 (2005).

The International Criminal Court (ICC) is a key institution in upholding the rule of law, and its contribution to the fight against impunity is crucial. Japan reaffirms its unwavering support to the ICC and the Office of the Prosecutor.

Japan is seriously concerned about the continued hostilities that have negatively affected the Office of the Prosecutor's ability to implement its mandate in the Sudan. Regrettably, it is reported that widespread war crimes and crimes against humanity are happening in the Sudan again. Furthermore, three major fugitives detained in Khartoum — Mr. Al-Bashir, Mr. Hussein and Mr. Harun — who are under ICC warrants, have now been released from prison upon the outbreak of the fighting. It is deplorable to learn that the efforts to establish meaningful justice for serious crimes have not taken root in the Sudan. Japan urges all the parties in the Sudan to immediately cease fighting and to respect the process of justice and the rule of law in the political process going forward. Justice and the rule of law are the fundamental pillars for building long-lasting peace. As the ICC emphasizes in its report, the impact of law must be felt in real time.

In that regard, we take note of the Court's investigation and collection of relevant information. We understand that that investigation is conducted pursuant to resolution 1593 (2005). We underscore that under international humanitarian law, all those involved

in hostilities are required to take steps to ensure the protection of civilians.

On the other hand, it is encouraging to learn that some progress has been made despite the challenges. In particular, we welcome the completion of the Prosecutor's case in the trial of Mr. Abd-Al-Rahman, the first-ever case from a Security Council referral, with the participation of victims' representatives.

Likewise, we appreciate the Office of the Prosecutor's active engagement with civil society and its launch of a public appeal via an online platform to enable victims and witnesses to provide information. We expect that those efforts will contribute to meeting the legitimate expectations of survivors.

We, the Security Council, need to do whatever we can to enable the ICC to fulfil its mandate based on the resolution. Japan reiterates its continued support for the Court and readiness to continue providing both human and financial resources.

**Mrs. Chanda (Switzerland)** (*spoke in French*): Switzerland would like to thank the Prosecutor of the International Criminal Court, Mr. Karim Khan, for his detailed briefing on the situation in Darfur, and welcomes the participation of the representative of the Sudan in this meeting.

In a few days' time, we will be celebrating the twenty-fifth anniversary of the adoption of the Rome Statute of the International Criminal Court, which marked a crucial milestone in the international community's commitment to the fight against impunity. By referring the situation in Darfur to the Prosecutor of the International Criminal Court, the Security Council highlighted the intrinsic link between justice and sustainable peace. What was reaffirmed 25 years ago is still valid today: there can be no peace without justice. With that conviction in mind, I would like to highlight three points.

First, we express our grave concern about the escalation of the conflict and the worsening humanitarian situation in the Sudan, including Darfur. Switzerland condemns the violations of international humanitarian law that may have been committed there. It is particularly concerned by the allegations of sexual and gender-based crimes, including those of mass rape and violence against children mentioned in the Prosecutor's report. In that respect, his decision to investigate incidents in the context of the current



hostilities is an important contribution to the fight against impunity.

Secondly, we welcome the progress made by the Prosecutor since the presentation of his most recent report (see S/PV.9249), despite the difficult context. Switzerland is closely following developments in the trial of Mr. Ali Abd-Al-Rahman and welcomes the speed of the proceedings and the central role given to victims and witnesses. Their voices must be heard. We also welcome the increased interaction with civil society organizations and affected communities, both inside and outside the Sudan.

Thirdly, we would like to stress the importance of full cooperation with the International Criminal Court. We reiterate our call on the Sudanese authorities and all parties to the conflict to fulfil their obligation to cooperate with the Court under Security Council resolution 1593 (2005). Switzerland welcomes the close cooperation between the Office of the Prosecutor and third countries. It calls on all States to redouble their efforts to ensure that the victims in Darfur receive the justice they have long awaited.

At a time when the situation in the Sudan is deteriorating on a daily basis, the need for justice is central and requires renewed commitment and attention from everyone, including the Council. Switzerland would like to reaffirm its determination to fight impunity and its unconditional support for the Court as an independent judicial body responsible for investigating the most serious crimes of concern to the entire international community. It is a beacon of hope and deserves our full support. As the report says, this time, the law should provide protection to those who need it most.

Allow me to conclude with the words of a Sudanese victims' representative: "We have been waiting for a long time to see perpetrators stand in court. We are following the progress of the Abd-Al-Rahman trial closely and trust that justice will be delivered".

**Mr. DeLaurentis** (United States of America): I thank Prosecutor Khan for his report and his briefing today on the ongoing investigations and prosecutions of the International Criminal Court (ICC) concerning the situation in Darfur. We appreciate the unwavering commitment of the Court's judges, attorneys and staff to the pursuit of justice for the people of Darfur.

The situation in Darfur is deeply disturbing. We hear credible reports of mass violence by the Rapid Support Forces and allied forces, including horrific forms of sexual violence, killings based on ethnicity and attacks that target civilians. That such violence is being perpetrated against the people of Darfur, who have already experienced the genocide, crimes against humanity and war crimes that prompted the ICC's investigation in the first place, is particularly devastating. As we have said before, the fighting must stop immediately and, with it, the unconscionable killing of civilians.

We condemn the atrocities committed by both parties throughout the country in the strongest terms. We call on the leadership on both sides to immediately stop the violence, enable the provision of humanitarian aid, medical care and appropriate services to survivors, and submit to a genuine process of dispute resolution. There is no acceptable military solution to this conflict. We concur with Prosecutor Khan's conclusion that the violence is the product of years of impunity, including the failure to hold those responsible for the most egregious crimes accountable and the failure to provide justice to the people of Darfur.

The Sudan's failure to follow through on its obligations under the Charter of the United Nations and its obligations to cooperate with the ICC over the past two decades under Security Council resolution 1593 (2005) reveals a disturbing pattern of disregard for international legal obligations, the rule of law and human life. We therefore welcome the Prosecutor's announcement that alleged war crimes and crimes against humanity committed during the current fighting may be subject to ICC investigation and prosecution and that his Office has commenced focused investigations on recent events. We commend the efficient progress that has been made over the past six months in the trial of former Janjaweed commander Mr. Abd-Al-Rahman, also known as Mr. Ali Kushayb, despite many challenges, and we acknowledge the courage of the witnesses and victims who have come forward. We also support efforts to bring to justice the four other current suspects with outstanding warrants in the Darfur situation: former President Omar Al-Bashir, former Minister Ahmed Harun, former Minister Abdel Raheem Muhammad Hussein and Abdallah Banda Abakaer Nourain. It is critical that the present whereabouts of these individuals be determined so that they can face the serious charges against them.

Let this be a warning to these and other fugitives, as well as to all others who would consider committing war crimes and other atrocities, including those involving acts of sexual violence, in the Sudan and elsewhere. The international community maintains an unrelenting commitment to individual criminal accountability and will not rest until those who stand accused of committing atrocities face justice. We urge all States to cooperate with the ICC in the Darfur situation and to deliver the justice promised to the people of Darfur. We urge all nations to join us in supporting efforts to hold accountable those responsible for past and present atrocities in Darfur and in standing with the people of the Sudan in their quest for peace.

**Mr. Korbieh** (Ghana): I would like to thank Mr. Karim Khan, Prosecutor of the International Criminal Court (ICC), for presenting his thirty-seventh report to the Council on the activities of the Office of the Prosecutor with regard to the situation in Darfur. I also wish to welcome the Permanent Representative of the Sudan, Ambassador Mohamed, to this meeting.

The current report demonstrates once again the Office's seriousness in dealing with impunity in Darfur, especially based on the continuous progress that has been made regarding the trial proceedings in the case of Mr. Ali Muhammad Ali Abd-Al-Rahman, which is the first trial before the Court on the basis of a referral from the Council. That progress would not have been achieved without the support of witnesses. On that score, Ghana applauds the courage of victims and witnesses who have braved all risks to provide testimonies in that particular trial. That fact further affirms that victims of atrocity crimes will always strive for justice, no matter how long it takes.

With reference to the current situation in Darfur, we strongly support the Prosecutor's decision to initiate investigations into the acts of alleged war crimes and crimes against humanity due to the current hostilities in the Sudan, and more particularly in Darfur. Ghana expresses grave concern about the loss of life and the displacement of thousands of people. Ghana reiterates its call on the parties to the conflict to respect their obligations under international humanitarian law and the international rules of engagement governing conflict.

We particularly condemn the ethnic dimension of the conflict, where black Sudanese populations are deliberately being targeted.

The current conflict in the Sudan will certainly have an impact on the road map of the Office in relation to the cases in Darfur. Despite those challenges, Ghana urges the Office not to relent on its continuous efforts to empower victims, witnesses and affected communities by bringing its work closer to the affected communities through sustained missions to Darfur, as well as the enhancement of the Office's permanent presence as soon as the situation is ripe for such engagements.

Ghana maintains its call for the full cooperation of the competent Sudanese authorities, especially on the Al-Bashir case, where documentary evidence is very much needed. We emphasize that this remains central to accelerating the investigative work of the Office and fulfilling the legitimate expectations of survivors. Ghana recalls that in the thirty-fifth report, the Prosecutor detailed some areas that are key to the work of the Office. Regrettably, as the report indicates, those commitments have not been kept, particularly with regard to the whereabouts of indictees such as Al-Bashir, whose present whereabouts are unknown in the wake of the current conflict in the Sudan.

We note with appreciation that during the period under review, the Office has continued to broaden and deepen its engagement with third States and civil society organizations in support of its investigative and prosecutorial activities. It is gratifying to note that the significant cooperation and assistance received from a number of those States has helped with the progress of the trial of Mr. Abd-Al-Rahman. We call on States and non-States parties to the ICC to continue to cooperate with the Office by giving timely responses to requests from the Office of the Prosecutor to support the effective and efficient discharge of the Office mandate, pursuant to resolution 1593 (2005).

We once again urge the Office to continue with its efforts to increase cooperation and dialogue with African States, as well as the African Union. As we have always emphasized, that approach could not only address the lack of cooperation between the Court and the Sudanese authorities, but also garner the broadest support to address issues of accountability in other cases that the Court is investigating.

I wish to conclude by once again thanking Mr. Khan for his leadership of the Office and commend the States and non-States parties that are cooperating and assisting the Office in carrying out its mandate, pursuant to resolution 1593 (2005), being the first referral from the

Council to the ICC. We call on the Council to support the work of the Office and send a strong and unified message to the perpetrators of atrocity crimes — that no matter where they hide, in due time, the arms of justice will seize them and deliver accountability for their victims, who should no longer be powerless.

To show its support and to emphasize that the ICC is truly relevant for us, Ghana joined this afternoon's press stakeout.

**Ms. Zabolotskaya** (Russian Federation) (*spoke in Russian*): What the Security Council just heard from the so-called Prosecutor of the so-called International Criminal Court (ICC) was not a briefing. The briefings of the officials of this politicized entity to the Council have long since turned into a theatre of the absurd.

This entity, which is an obedient tool in the hands of the West, operates in two modes. The first is the speedy fabrication of cases against unwanted persons from out-of-favour countries and the second is an imitation of work, accompanied by explanations of why said work is not yielding results. At present, the ICC is in the second mode when it comes to the Sudan file. As a result, every six months the Council has to listen to verbal gymnastics and explanations about who is to blame for the fact that nothing is happening.

In that context, we could not overlook the fact that Mr. Khan, in his briefing, characterized the only trial, against Ali Kushayb as “the most efficient proceedings in the history of the Court.” Let me recall that this case was opened 17 years after the situation was referred to the ICC. Here, the obvious comparison is the following: as the Court is, so too is its “most effective trial”. After all, the ICC did not see anything objectionable in the mass war crimes committed by NATO in Afghanistan, Iraq and Libya. Against that backdrop, even one person accused in Darfur was truly an impressive success.

The current report on Darfur is as empty as the previous ones. We must finally honestly admit that the ICC is unable and not particularly willing to fulfil the mandate conferred to it by resolution 1593 (2005). As soon as the story of “electoral violence” in Darfur ceased to be of interest to its Western masters, the ICC switched to the mode of sluggishly imitating work, which it has been doing for almost two decades.

At the same time, the ICC chose the simplest way to explain its ineffectiveness — by blaming its failures on national authorities. Indeed, with a budget of hundreds

of millions of dollars, why would it not report two times a year that the ICC is powerless because the Sudan is supposedly not cooperating? But it is very difficult to reproach the Sudan, given what the ICC has become since 2005, the date the Darfur file was referred to it by the Security Council to it, and the consequences of the Court's activity, including for this country.

The situation in the Sudan perfectly illustrates the false Western premise that there can be no peace without justice. We are, of course, talking about ICC justice. The situations in Darfur and Libya referred by the Security Council to the ICC are similar. In both of them, the ICC, though progressing at different paces, did fulfil its main and only function — being a battering ram to destroy the statehood of developing countries that are out of favour.

The ICC is a direct accomplice in the collective West's crimes. It is equally enthusiastic in fabricating cases against those who have been designated “bad guys”, closes its eyes to the atrocities of “very bad but loyal to the West guys” and, of course, it sweeps under the carpet the numerous crimes committed by its masters.

ICC justice has become synonymous with impunity for the architects and the main beneficiaries of the all-consuming chaos that follows the collapse of a State. The bloody price for the various “colour revolutions” organized by Western countries is always measured in the hundreds of thousands of civilian lives lost and broken. The blood of those victims is in part on the conscience of the ICC officials.

Currently, for example, we are again witnessing a conflict in the Sudan. The level of suffering among the civilian population is clearly higher than during the “electoral violence” of 2005, and the ICC still adopts a wait-and-see position. Why is that? That is because its “Western patrons” have not yet decided who they are going to support in the conflict that is taking place in the country. However, once we see Mr. Khan becoming active in the Sudan, we will know that they have established their priorities.

We need to consider the following: did it make sense to spend millions on the ICC in Darfur? Maybe it would have made been better spent on more effectively helping the Sudan to strengthen State institutions. Maybe justice should be in the hands of the people of the country, and not the forces from across the seas. Practice has shown that had that been the case the



process of justice would have been more effective and would certainly not have been accompanied by the collapse of the State.

The main question that we need to be considering in this context is who actually needs the ICC and why. This question also arises in context beyond that of the Sudan. The Court was planned as a comprehensive international body of justice, but from the very beginning, something went wrong in the practical implementation of this ideal. Western countries immediately started using the Court as an instrument for imposing their will under the infamous “rules-based order”. Initially, they proceeded carefully, making sure they did not frighten potential allies. In its first years, the ICC pointedly limited itself to investigations against non-State actors. However, as soon as the West saw that a sufficient number of countries were in bondage to the Rome Statute, the ICC moved on to more decisive work under its direct remit, becoming an instrument of fighting those who crossed the path of the hegemon and its satellites. And the focus immediately shifted to State leaders, up to and including former and even current heads of African States.

It is noteworthy that the absolute majority of cases on the ICC’s docket are concerning Africa, despite the fact that the most massive and bloody atrocities in modern history were committed by Western countries, which steamrolled not just across countries, but across entire regions, with their aggression. Throughout its existence, the ICC has filed charges against 52 people, 47 of whom are Africans. There are no Western nationals on that list at all. We must therefore draw the obvious conclusion that the ICC is simply an instrument for punishing those who displease the West.

Accordingly, we must honestly acknowledge that the ambitious project of a genuinely universal and impartial international court has failed. We suggest that those States that sincerely seek to restore justice, inevitably punish crimes and have national reconciliation should consider strengthening their national justice systems and stop participating in this politicized entity that has nothing to do with justice.

**Mr. Dai Bing** (China) (*spoke in Chinese*): I have listened attentively to the briefing by Prosecutor Karim Khan and welcome the Permanent Representative of the Sudan to today’s meeting.

China’s position on the International Criminal Court (ICC) has been consistent. The Court’s current

cases relating to the Sudan were referred to the ICC in 2005. We hope that in its work the Court will continue to strictly comply with the principle of complementary jurisdictions, as stipulated in the Rome Statute, fully respect the judicial sovereignty and legitimate opinions of the country concerned and avoid politicization and double standards.

Some colleagues have mentioned the current situation in the Sudan, and I wish to briefly state China’s position. The armed conflict in the Sudan has persisted for three months. Although the two parties to the conflict have reached multiple temporary ceasefires, fighting has never stopped. The recent humanitarian tragedy in the Omdurman region is the last thing that any party would wish to see. China hopes that all parties in the Sudan will prioritize the peace of the country and the well-being of its people, resolve differences through dialogue and negotiation, cease hostilities and end fighting at an early date, in order to avoid a greater humanitarian crisis.

China supports the efforts of regional organizations and the countries concerned in promoting peace talks. We note that the African Union and the Intergovernmental Authority on Development have convened a number of meetings on the issue of the Sudan in order to come up with proposed solutions. Egypt has also just hosted a summit of the Sudan’s neighbours. China hopes that the United Nations and international partners will support the efforts of regional organizations and cooperate with them. We encourage the regional organizations to strengthen coordination with all parties in the Sudan and form synergies to promote an early de-escalation of the situation and avoid greater spillover effects.

Recently, the humanitarian situation in Darfur has deteriorated. The Darfur issue goes back a long way and involves such complex factors as intercommunal clashes, competition for resources and external interference. The conflict in the Sudan has made the situation in Darfur even more fragile. China is of the view that the most urgent task at this stage is to urge all parties to uphold and implement the Juba Peace Agreement and provide support to the Sudanese authorities so that they can fulfil their primary responsibility to protect civilians. China calls upon all parties to abide by their obligations under international humanitarian law, fulfil their responsibility to protect civilians and curb violence, and ensure unimpeded humanitarian assistance.

**Mr. França Danese (Brazil):** I thank the United Kingdom presidency of the Security Council, and Japan and Switzerland as co-focal points, for facilitating today's periodic briefing, which is an important tool for the international community to keep track of the follow-up to its referral to the International Criminal Court of the serious violations perpetrated in Darfur. I also acknowledge the presence of the Permanent Representative of the Sudan at today's meeting.

I also thank Prosecutor Karim Khan for the thirty-seventh report to the Security Council submitted pursuant to resolution 1593 (2005). This resolution is an important instrument in the history of international criminal justice, as it was the first time the Security Council availed itself of its power to refer a situation to the Court, even though the resolution allowed for discriminatory exercise of ICC jurisdiction.

The thirty-seventh report brings a grimmer picture than we have seen of the prospects for the investigation and prosecution of the crimes committed in Darfur. Progress seems to have stalled in important aspects of the road map proposed by the Prosecutor for the follow-up to the referral. The conflict in the Sudan has affected the ability of the Office of the Prosecutor to conduct investigations and outreach activities in Darfur. It has also affected the Sudanese authorities' capacity to comply with assistance requests.

In order for the Office of the Prosecutor to be able to carry on with its work, the necessary security conditions must be established. We therefore call again for the immediate cessation of the current hostilities. To counteract those setbacks, a few steps should be taken when the situation allows.

First, cooperation between the Office of the Prosecutor and national authorities is key. Despite the current crisis, which limits the authorities' ability to respond to the ICC, it is crucial that they improve their cooperation with the Office of the Prosecutor.

Secondly, complementarity is a fundamental principle of the Rome Statute and the basis for effective international justice in the long term. Without strong national institutions capable of delivering justice to local populations and of protecting them from further harm, there will always be a higher risk of relapse in instability, conflict and the perpetration of serious crimes. That is why the primary responsibility to provide justice belongs and must remain with national States, without prejudice to the complementary role the

ICC must play when the States are unable or unwilling to do so. In that regard, the international community must stand ready to support the Sudan in enhancing its national institutions' ability to investigate and punish the perpetrators of serious crimes under international law.

Thirdly, the Office of the Prosecutor needs help in overcoming the challenges related to the limitations on the internal resources he needs to do his work. In that respect, I want to reiterate Brazil's position on the need for expenses that the Court incurs as a result of referrals by the Security Council to be borne not just by States parties to the Rome Statute but by the United Nations as well.

We were glad to hear that in the first trial following the adoption of resolution 1593 (2005) the prosecution was able to present its case against Mr. Abd-Al-Rahman. The hearings before the Court brought to the forefront the suffering of people who had lost their families. Brazil welcomes the continued engagement of the Office of the Prosecutor with third States and regional organizations to support its investigative and prosecutorial activities. We also commend the measures taken by the Office of the Prosecutor to maintain its dialogue with civil society and representatives of communities affected in the Darfur region, despite the obstacles preventing direct outreach to them in their territory.

The Sudan has faced severe economic hardship in recent months. The fighting that broke out in April aggravated an already dire situation. Half the population is in need of urgent humanitarian assistance, and many have fled their homes and sought refuge in neighbouring countries. We urge all stakeholders to abide by their obligations under international humanitarian law and international human rights law to protect civilians and enable humanitarian action. We commend all the mediation efforts by international organizations and other partners aimed at ending the current crisis. We also want to remind everyone that the Juba Peace Agreement of 2020 remains binding on all its signatories. Respect for its terms will be crucial to bringing durable peace to the Sudanese people.

Brazil is a founding member of the ICC and has a deep-rooted commitment to international law and international justice. The ICC, as a permanent treaty-based tribunal, represents a breakthrough for ensuring accountability for the most serious crimes under international law. It is important to ensure that it pursues

all its investigations with equal zeal and support from the international community.

**Mr. Camilleri** (Malta): I too thank Prosecutor Khan for his briefing, and I am grateful to him and his team for all their commitment and efforts in the pursuit of justice. We also welcome the Permanent Representative of the Sudan to this meeting.

Accountability remains essential to ending the cycle of violence that has engulfed the Sudan, destroyed many lives and displaced many people, particularly the most vulnerable. Regrettably, our discussion today illustrates what a disregard for international obligations and the linked absence of meaningful justice and accountability for serious crimes can lead to. Ensuring justice for the people of the Sudan is crucial. That is the case for all the atrocity crimes committed, including those that are the result of the escalation of violence during the current hostilities. In that regard, we express our support for the Prosecutor's efforts, including the start of investigations of incidents in Darfur in the context of the hostilities. It is imperative that this time around we ensure that the victims and the people of the Sudan truly feel the tangible effects of the law. Malta deplores all sexual and gender-based crimes, including campaigns of mass rapes and violence against children. All allegations must be investigated, and the victims of atrocities must be given the justice they deserve.

We commend the efforts of the Prosecutor to remain focused on the core elements of the renewed strategy for the situation in Darfur, as outlined in previous briefings. Ensuring that investigations and prosecutions continue unchecked is essential. In that connection, we welcome the completion of the Prosecution's case in the trial of Ali Kushayb and all the efforts to make sure that the trial was not unreasonably delayed as a result of the current situation. We applaud the profound courage and determination of the witnesses, without whom that would have not been possible. We also welcome the progress that has been made in other key areas, such as access to information and leads relevant to the investigations. We commend the launch of a dedicated online appeal for information and the support of third States and other organizations in that regard. The continued efforts to empower the victims, witnesses and communities affected are critical, including the convening of a round table for civil-society organizations on gender persecution, with invitations to civil-society organizations from the Darfur region.

While we commend States that have cooperated with the Court, we regret that the Sudanese authorities have failed to abide by their obligations under resolution 1593 (2005). We stress that cooperation is central to the investigative work of all cases and to meeting the legitimate expectations of survivors. We are concerned about the release of the suspects Omer Al-Bashir, Abdel Raheem Muhammad Hussein and Ahmed Harun from Kober prison in Khartoum. Maintaining investigative activities to strengthen the evidence base is essential.

Let me reiterate Malta's concern that the outbreak of ethnic violence in Darfur bears a terrifying similarity to the suffering of civilians 20 years ago. The situation in El Geneina mentioned in the Prosecutor's report is of the utmost concern. We deplore ethnically motivated targeted killings, sexual violence, the widespread burning of homes and mass displacement. We urge all the parties to cease violations against civilians and comply with international humanitarian law. Malta supports mediation efforts, including regional initiatives, solidified by strong and unified messages from the Security Council.

We echo the call to the parties to cease hostilities without preconditions and lead the Sudan back to its political transition. Our collective aim here is to ensure a durable and sustainable peace in the Sudan, which is unfortunately eluding us as the violence has surged. Sustainable peace can be achieved only by addressing the grievances and providing justice to the victims and survivors of atrocity crimes. The Office of the Prosecutor and the International Criminal Court can count on Malta's unwavering support in all their efforts to ensure accountability.

**Mrs. Onanga** (Gabon) (*spoke in French*): I thank you very much, Sir, for convening this meeting on the thirty-seventh report of the Prosecutor of the International Criminal Court (ICC) pursuant to resolution 1593 (2005). I also thank Prosecutor Karim Khan for his contribution to international criminal justice in prosecuting serious violations of international humanitarian law committed in the Sudan. I welcome the representative of the Sudan and his delegation to this meeting.

Our discussion of this agenda item is taking place at a time when hostilities leading to mass displacements in the Sudan continue to rage, despite the political and diplomatic efforts being made under the auspices of the African Union and the Intergovernmental Authority on

Development, as well as the United States- and Saudi-led mediation within the framework of the Jeddah process. The environment created by the political and humanitarian crisis, marked by serious acts of violence against women and children, prevented the Office of the Prosecutor from visiting the Sudan so that its members could meet with the country's authorities and carry out the judicial investigations and fact-finding activities mandated by the Security Council. In such a situation of insecurity, it is the investigative team's responsibility, given the resources available, to assess whether its members can carry out the tasks they have been set according to the established timelines in order to shed light on the facts and ensure that justice prevails.

Against that very difficult backdrop, we welcome the fact that the very first case investigated by the Court, that involving Ali Muhammad Ali Abd-Al-Rahman, came to a successful conclusion, which represents an important step forward in the process of investigating the crimes and bringing justice to victims and survivors. We must do everything possible to end the war in the Sudan so that we can see this vast undertaking come to fruition. We call wholeheartedly for redoubling political and diplomatic efforts to restore peace and stability to a country scarred by many years of war.

We also welcome the special attention that the Prosecutor continues to give to civil society and communities affected by the conflict in Darfur, and we encourage him to continue his efforts to strengthen the effectiveness and performance of the Court's services. However, the effectiveness of all of those measures still depends on improving the political and security situation in the Sudan. In that regard, we want to emphasize that the restoration of peace is an absolutely essential condition for the Sudanese authorities to be able to honour the commitments made under the 12 August 2021 memorandum of understanding, which established the terms of uninterrupted cooperation between the Sudan and the Office of the Prosecutor. As soon as the appropriate conditions allow, we hope the authorities will respond positively and without further delay to the designation of focal points, which are essential links in the chain for the pursuit of productive cooperation.

I would also like to stress the importance of building the capacity of the Sudanese judiciary. It will be essential to make those courts and other mechanisms relevant and more effective in order to reaffirm their willingness to eradicate impunity, with a view to once again putting a stop to the hellish cycle of violence

and massive violations of human rights such as those currently happening across the country. Responding diligently to official requests for assistance would contribute significantly to that.

In conclusion, Gabon would like to reaffirm its full support for the efforts of the Prosecutor and encourages the Sudanese authorities to cooperate fully with his Office. That partnership remains vital for the effective implementation of resolution 1593 (2005).

**Ms. Shaheen** (United Arab Emirates) (*spoke in Arabic*): At the outset, I thank Mr. Karim Khan, Prosecutor of the International Criminal Court (ICC), for his briefing and welcome the participation of the representative of the Sudan in our meeting today.

We are concerned about what we have been witnessing in the Sudan as the fighting has escalated and has resulted in civilian casualties, including in the Darfur region, in a reflection of the fragile security situation caused by the ongoing clashes in the country. We firmly condemn such criminal acts, as well as the burning of homes, public facilities and hospitals, which has led to a total collapse of medical services and the influx of hundreds of families into neighbouring countries. We are also concerned about the negative repercussions of the security situation on ongoing humanitarian efforts in the country. That demands continuing the ceasefire initiatives and redoubling efforts to find an urgent political solution to the crisis. The United Arab Emirates therefore calls on all the parties to heed the voice of wisdom and reason, stop the fighting immediately and adhere to what was agreed in Jeddah. We also underscore the importance of respecting international humanitarian law and facilitating relief assistance to meet the growing needs of the Sudanese people. In that context, the United Arab Emirates has provided humanitarian and medical support to alleviate the dire humanitarian situation caused by the influx of Sudanese refugees into Chad in the wake of the fighting.

Diplomatic efforts remain essential at this critical time, and we stress the importance of coordinating international and regional efforts to ensure their effectiveness. We would like to remind members of the press statement the Security Council released last month (SC/15305), pointing out to the parties that the Juba Peace Agreement remains binding on all signatories and should be fully implemented. That especially applies to its provisions on the permanent



ceasefire in Darfur, which also requires the necessary support of the international community.

In conclusion, we take note of the Prosecutor's statement and report, particularly with regard to the mandate of his Office pursuant to Security Council resolution 1593 (2005). In that regard, the United Arab Emirates reaffirms its position that the principle of complementarity enshrined in the Court's Statute must guide the work of the Court and its Prosecutor. The objectives of complementarity must continue to be pursued as soon as the conditions are conducive to discussions on how to achieve that complementarity.

**Mrs. Dime Labille** (France) (*spoke in French*): I thank Prosecutor Khan for presenting his thirty-seventh report pursuant to resolution 1593 (2005), concerning the Sudan. We welcome his willingness to renew the Office of the Prosecutor's strategy in view of the changing context in the Sudan, and to return there as soon as the situation allows.

France is very concerned about the security situation in the Sudan. We condemn the continued fighting and urge all the parties to cease hostilities and respect their obligations under international humanitarian law, including by protecting civilians and ensuring humanitarian access throughout the territory. The clashes represent a tragic setback in the transition to the civilian Government that the Sudanese people desire. France reaffirms its solidarity with the Sudanese people, who are the main victims of the conflict. In particular, the violence in Darfur is worrisome in terms both of its scale and its community dimension. The United Nations Integrated Transition Assistance Mission in the Sudan has stressed that the ethnic violence that has occurred in recent years in Darfur could constitute crimes against humanity, if proved. In that regard, the information communicated today by the High Commissioner for Human Rights on the discovery of mass graves is extremely worrisome. We note the willingness to address that situation that the Prosecutor of the International Criminal Court (ICC) expressed in his statement. Building a lasting and inclusive peace in the region will not be possible without justice. In that context, the Court's opening of an investigation into the situation in Darfur, in line with the Security Council's request in its resolution 1593 (2005), is essential, including with regard to the crimes committed against the backdrop of the ongoing conflict. France invites the Office of the Prosecutor to

continue its efforts to investigate and monitor crimes committed in the new context.

The events in the Sudan have worrisome potential consequences for the conduct of the Court's investigations. We call on the Sudanese authorities to cooperate with the Office of the Prosecutor and to honour their obligations under resolution 1593 (2005), the Juba Peace Agreement and the memorandums concluded with the Office of the Prosecutor. While the situation of Omer Al-Bashir, Abdel Raheem Muhammad Hussein and Ahmed Harun has been uncertain since the beginning of the clashes in Khartoum, we encourage the Sudan to respond to the Court's formal request to clarify their whereabouts. We once again urge Abdallah Banda Abakaer Nourain to immediately present himself to the Court so that he can be tried.

France welcomes the continuation of the trial in the case of Ali Muhammad Ali Abd-Al-Rahman, otherwise known as Ali Kushayb. We commend the important work done by the Office of the Prosecutor and the Court as a whole in handling that case. We recall that it is essential that the witnesses in that case be able to intervene without risk of reprisals and without hindrance. We also commend the cooperation between the Office of the Prosecutor and third States, as well as with international organizations, and encourage countries in the region to continue their cooperation with the ICC, particularly to ensure that the Court can take evidence from Sudanese refugees. While the Prosecutor is carrying out essential investigative work on all abuses within his jurisdiction, including in Darfur, Libya, the Sahel and Ukraine, we reaffirm France's support for the International Criminal Court as the only permanent international criminal jurisdiction with a universal vocation. The victims and their families, and the survivors of atrocities, know that we need the International Criminal Court and that it is an indispensable judicial body.

In conclusion, I want to affirm that a lasting return to peace in the Sudan cannot be achieved without the involvement of all Sudanese actors. France calls for the Sudan's political forces and civil society to engage in the ongoing discussions as soon as possible, with a view to achieving a lasting ceasefire and a political resolution to the crisis. We reaffirm our support for the efforts of the States of the region, the Intergovernmental Authority on Development and the African Union, and for the work of the United Nations.

**Mr. Pérez Loose** (Ecuador) (*spoke in Spanish*): I would like to welcome the Prosecutor of the International Criminal Court and to once again recognize his Office's outstanding work in the implementation and enforcement of international criminal law. I also welcome the Permanent Representative of the Sudan to this meeting.

During his presentation of the previous report on this situation (see S/PV.9249), the Prosecutor said that he hoped to be able to report tangible progress in the implementation of the renewed investigation and prosecution strategy in his next briefing of the Security Council. Unfortunately, the outbreak of hostilities in April, which has caused a severe humanitarian crisis, with hundreds dead and wounded and more than 2.8 million people displaced, has prevented the achievement of the objectives proposed. In that context, my delegation would like to focus on three aspects of the Prosecutor's report.

First, Ecuador is particularly concerned about the allegations of sexual and gender-based violence against children and other attacks on them. Under resolution 1593 (2005), the International Criminal Court has jurisdiction to investigate and prosecute alleged war crimes and crimes against humanity that are committed against children in the current conflict. We therefore welcome the fact that the Office of the Prosecutor has started investigations into the allegations of extrajudicial killings and the burning of homes and looting in El Geneina and other areas of Darfur. As the Special Adviser on the Prevention of Genocide said in a press release on the situation in the Sudan, when perpetrators of past atrocities are not held accountable for their acts we are doomed to see history repeat itself.

Secondly, we urge the authorities to comply with their international legal obligations and to cooperate with the Court in order to create the conditions that can enable its officials to move around the Sudan's territory and gain direct access to evidence and witnesses. We also encourage the Office of the Prosecutor to continue to strengthen its relationship of cooperation with third States and international organizations.

Thirdly, regarding the *Abd-Al-Rahman* case, which the Prosecutor has completed, we hope the proceedings will not be affected by the current conflict, as this represents a historic and long-awaited opportunity for justice for the victims in Darfur. We urge the Sudanese authorities to respond to the Prosecutor's request for

information on the whereabouts of Mr. Al-Bashir, Mr. Hussein and Mr. Harun, who have reportedly been released from Kober prison in Khartoum, and to take concrete action to locate Mr. Banda, who remains at large. We also call on the Government of the Sudan to provide protection to victims and witnesses.

The violence we are witnessing in the Sudan reminds us of the importance of breaking the cycle of impunity. For that reason, Ecuador reaffirms its support for the International Criminal Court, whose work, in observance of the principle of complementarity, will contribute to achieving sustainable peace in the Sudan. And we maintain that support despite the fact that the work of the Court and the Office of the Prosecutor is not always welcomed by some Governments.

**Mr. Stastoli** (Albania): Let me begin by thanking Prosecutor Khan for his valuable and sober presentation and his steadfast commitment to fighting impunity for serious violations of human rights.

Despite all the obstacles, we are encouraged by the progress that has been made in the pursuit of justice in the Sudan. The completion of the case for the trial of Ali Muhammad Ali Abd-Al-Rahman is a long-awaited step towards justice. It is one of the most efficient cases in the history of the International Criminal Court (ICC), and we especially welcome the participation of victims in it. We applaud the Court's decision to hear in person women and girls who were subjected to sexual violence in Darfur to let them speak for themselves and fight their stigmatization and suffering. We also welcome the launch of the public campaign for supplying information and call on people of goodwill and the aggrieved to seize that opportunity and share information and evidence with the Office of the Prosecutor on alleged atrocity crimes committed since 2003.

However, we are troubled by the heinous crimes that have been committed in the wake of the recent outbreak of conflict in the Sudan. They include mass rapes and violence against women and children, extrajudicial killings and deliberate attacks on civilians and civilian infrastructure. We fully support the Prosecutor's decision to extend investigations into the ongoing hostilities. We are troubled by the release of Omer Al-Bashir, Abdel Raheem Muhammad Hussein and Ahmed Harun, who had been held in custody until the outbreak of fighting in Khartoum on 15 April, and we ask that the Sudanese authorities hand them over to the ICC to face justice. We deplore the lack

of cooperation of the Sudanese authorities with the Office of the Prosecutor, and the fact that they have not honoured the commitment they made in this Chamber in January (see S/PV.9249) to supporting the Prosecutor to pursue justice for crimes committed in Darfur. We call on all the Sudanese authorities to show goodwill and cooperate in good faith with the Office of the Prosecutor to address past and present crimes committed in the country. There will be no end to the violence and suffering in the Sudan unless we put an end to impunity so that we can bring all perpetrators to justice.

In conclusion, let me reiterate our unwavering support to the ICC in the pursuit of justice and accountability for all atrocities, wherever they are committed. We applaud States' expanded support partnerships with the Court and call on all States to cooperate in good faith with the Court to advance peace and justice around the globe.

**Mr. Afonso** (Mozambique): Mozambique would like to thank Mr. Karim Khan, Prosecutor of the International Criminal Court (ICC), for his update, and we welcome the participation of the Permanent Representative of the Sudan in this meeting.

Mozambique attaches great importance to the information just shared by the Prosecutor regarding the activities carried out by the Court pursuant to resolution 1593 (2005) in the Republic of the Sudan.

We note that despite the efforts made by the Government of the Republic of the Sudan before the hostilities began in April, recent reports point to an increase in violence against the most vulnerable sectors of the population, especially women and children. The situation has been aggravated by the current political, military and humanitarian crisis in the country. We believe that the solution to the conflict in the Sudan and Darfur lies in a combination of judicial and non-judicial measures. In our view, that approach will contribute to enhancing accountability and laying down the building blocks for a true national reconciliation process in the Sudan. In that regard, we would like to highlight the following points.

First, addressing injustice is crucial to paving the way towards reconciliation and sustainable peace. Both the Juba Agreement for Peace in the Sudan and the national plan for the protection of civilians in Darfur reaffirm the centrality of justice, accountability and the protection of human rights in the peace process in the

Sudan. In the spirit of the principle of complementarity enshrined in the Rome Statute, we recognize the crucial role of the ICC in combating impunity for massive and systematic human rights violations in its efforts to promote the rule of law.

Secondly, the situation in the Sudan remains of great concern. Despite multiple ceasefires, violence continues to spread, causing civilian fatalities, particularly in Khartoum, Darfur, Blue Nile and Kordofan. We reiterate our strong condemnation of the attacks on civilians and their private property. Abuses and violations of human rights, including sexual violence against girls and women, are equally unacceptable, and we condemn such heinous crimes. We call on the parties to comply with international humanitarian law and human rights law at all times. In that regard, we welcome the commitment of the Intergovernmental Authority on Development (IGAD) to working closely with the international community to put in place a robust monitoring and accountability mechanism in order to bring the perpetrators of such abuses and crimes to justice. We condemn in the strongest terms the repeated violations of the Vienna Convention on Diplomatic Relations of 1961, as manifested in attacks on and looting of diplomatic missions and premises. We demand respect for the inviolability and protection of such premises.

Finally, in the pursuit of justice for the Sudanese people, there is a need for the national and regional judiciary institutions to play an important role, along with reconciliation mechanisms such as the transitional justice provisions of the Juba Peace Agreement, and the African Court on Human and Peoples' Rights. We therefore encourage the Office of the Prosecutor to maintain a constructive dialogue on this process with the Sudanese authorities and other stakeholders, including IGAD and the African Union. In defending the supreme interests of the Sudanese people, we need to focus our efforts on achieving a cessation of hostilities, making peace and addressing the root causes of conflict in the Sudan.

**The President:** I will now make a statement in my capacity as the representative of the United Kingdom.

I thank Prosecutor Karim Khan for his thirty-seventh report on the situation in Darfur and his briefing today. I welcome the unwavering commitment of the International Criminal Court (ICC) to helping to deliver justice for the people of Darfur. I also recognize

the participation of the representative of the Sudan in this meeting.

The United Kingdom welcomes the progress made in the trial of Mr. Abd-Al-Rahman. The case is testament to the victims' courage and patience in being willing to tell their stories after two decades. We urge all parties to help maintain the trial's momentum. However, we regret that from the October 2021 military coup until the outbreak of conflict in April 2023, the Sudanese authorities failed almost completely to cooperate with the ICC. We share the Prosecutor's concern about the impact of the current conflict on the ongoing investigations, including the apparent release from custody of ICC suspects. We are also deeply troubled by today's reports of continued violence and mass graves outside the capital of West Darfur. The United Kingdom shares the Prosecutor's assessment that the current conflict is partly the result of the failure to ensure justice and accountability on the part of those who hold power in the Sudan. Their disregard for international obligations and for ensuring meaningful justice for past crimes has helped sow the seeds of this latest cycle of violence and suffering.

All sides are responsible for the crimes they commit. We remind the Sudanese Armed Forces and the Rapid Support Forces that the ICC's mandate in Darfur is ongoing. We welcome the Prosecutor's decision to commence investigations into offences committed in the current conflict — including, in particular, ethnically targeted killings and sexual violence. In conclusion, the United Kingdom would like to reiterate its support to the Court in delivering justice for the people of Darfur. At the same time, we underline the Council's call for an immediate end to the current hostilities.

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*): At the outset, I would like to congratulate you, Mr. President, on your country's presidency of the Security Council this month and to thank Mr. Karim Khan, Prosecutor of the International Criminal Court (ICC), for the comprehensive briefing he provided today to the Security Council and detailed in his report. We are also grateful to him for his efforts and endeavours, his positive engagement and his commitment to ensuring the implementation of criminal justice for redressing victims and survivors in Darfur.

There is a legal basis for cooperation between the Government of the Sudan and the ICC, and that basis must be clarified. As everyone is aware, the Sudan has not yet ratified the Rome Statute of the ICC. However, following the December 2018 revolution, and specifically in 2021, the Transitional Government was understanding and began to cooperate and coordinate with the Court. The Sudan received an ICC delegation in December 2021. At that point, cooperation with the Court was asserted pending ratification of the Statute, while the Sudan provided facilitations, including agreeing to the obligation to protect witnesses. In response, the ICC delegation commended the Government of the Sudan on its cooperation. In that context, former Prosecutor Fatou Bensouda visited the Sudan, particularly the refugee and internally displaced persons camps in Darfur.

The memorandum of understanding was signed in consideration of paragraph (a) of article 86 of the Rome Statute, concerning States not party to the Statute, with a view to providing the assistance established in part 9, which requires cooperation with the ICC and the Prosecutor with regard to ICC investigations in the Sudan and the extradition and transfer of suspects for whom arrest warrants were issued.

The memorandum of understanding establishes cooperation mechanisms between the two parties, but ensuring that cooperation under national laws involves the legal reform of transitional justice, as noted by certain Council delegations today, as well as the Sudan's approval to cooperate with the ICC. I underscore that the extradition of suspects is conducted under a permanent legal framework, rather than a temporary one, as required by the ongoing conditions of the political transfer process, with the challenges noted by the Prosecutor's report.

Furthermore, full cooperation with the ICC also requires that we finalize the ratification of the Rome Statute in accordance with the provisions of Sudanese law, where a request for cooperation requires a statement that indicates the underlying legal basis and specific information on the place of residency and identity of persons. The Government of the Sudan treats the ICC like any other intergovernmental organization, and there are no restrictions on the Court's communications, movements or activities in the Sudan.

The implementation of requests for assistance under paragraph (a) of article 99 of the Rome Statute



will be carried out in accordance with the procedure established by national law. I note that according to paragraph 4 of article 93 of the Statute, the Government of the Sudan can refuse to cooperate, fully or partially, when the Court's request concerns presenting documents or evidence related to our national security. The Government of the Sudan can also declassify such documents, but that takes time. Notwithstanding, the Government of the Sudan does cooperate with the ICC Prosecutor. Ratification of any international conventions must be submitted to the Ministry of Justice for its review. I have clarified that point many times in the Security Council, and it is included in article 19 of the memorandum of understanding signed between the ICC and the Sudan.

Procuring the accused or suspects or getting access to evidence and witnesses require more international cooperation. Until a legal framework is introduced, the form of cooperation and legal compliance will remain shaky because the measures contained in the Convention on the Prevention and Punishment of the Crime of Genocide seem to be very primitive. Pending the final ratification of the Rome Statute, the best path forward is to maintain cooperation between the Court and the Sudan, under article 1 of the Rome Statute, on the basis of the complementarity principle.

With regard to cooperation between the Government of the Sudan and the Office of the Prosecutor, the memorandum of understanding, signed on 12 August 2021 between the Minister of Justice of the Sudan and the Prosecutor, is based on a legal framework that combines the implementation of resolution 1593 (2005), on the cooperation of the parties to the conflict in Darfur and the Government of the Sudan with the ICC, and cooperation under paragraph 5 (a) of article 87 of the Rome Statute, which calls upon non-States parties to provide assistance in trial proceedings, under part 9 of the Statute, for crimes committed in the Darfur region since July 2002, to facilitate investigations in the Sudan and to transfer suspects for whom arrest warrants have been issued.

With regard to facilitating investigations on the Sudan's territory, there was no objection in principle, and given the current exceptional circumstances, it is possible to start considering enhancing cooperation so as to ensure justice for victims and to discuss the Prosecutor's proposals through the established channels of communication or the focal points on the basis of the principle of legal complementarity and article 3 of the

memorandum of understanding. The Ministry of Justice is the channel of communication when it comes to requests for cooperation, information and coordination between the two parties, as needed. That is a request made by the Prosecutor.

Pursuant to article 10 of the Rome Statute, the Office of the Prosecutor may also provide assistance to the Sudan in conducting an investigation or prosecution for any crime within the Court's jurisdiction or for any crime under Sudanese legislation. That includes technical and legal coordination, which has not taken place. The Sudan cannot be held solely accountable for that. Any such request has to provide sufficient time, as specified in article 18 of the memorandum of understanding, which refers to paragraph (a) of article 99 of the Rome Statute, which, in turn, supports the Sudan's position with regard to requests for cooperation, to be carried out in accordance with the applicable procedures under national law and in the manner specified in the request, unless it is otherwise prohibited by law. Article 20 of the memorandum of understanding noted the need to implement the Prosecutor's requests on a voluntary basis with regard to interviewing persons and inspecting sites. Said requests must allow sufficient time, as agreed by both parties, and provide information on the activities to be carried out on the territories of the Sudan.

The Juba Peace Agreement mentioned by certain delegations has not been implemented — in particular the demobilization, disarmament and reintegration process — since the donors and the international community have not funded the process in full and the pledges have not been honoured. It was therefore not possible to complete this process on the basis of national resources alone due to the current economic difficulties. I would ask that delegations not accuse the Sudan of this failure every time this issue is raised.

On cooperation with the Prosecutor from 2020 to 2022, including after 25 October, the report referred to violations of international humanitarian law as falling under the jurisdiction of the ICC, but it is legally established that international humanitarian law and the four Geneva Conventions apply to international armed conflicts, not domestic conflicts. Despite that, the Sudan has upheld all of its commitments related to the ceasefire agreement, under the auspices of the United States and the Kingdom of Saudi Arabia in Jeddah.

The report also notes, in more than one paragraph, that the Government of the Sudan did not cooperate with the ICC and refers to the increased deterioration of relationships before the breakout of the ongoing clashes. However, the Government of the Sudan has been cooperating with the ICC and the Office of the Prosecutor as follows.

The Sudan signed the Rome Statute in 1998, and the Ministry of Justice conducted a study on the Statute, which was presented to the Council of Ministers for final ratification. However, political developments prevented the report from being ratified, and, in May 2021, a cooperation agreement between the Government of the Sudan and the ICC was signed. Then, in August 2021, the memorandum of understanding was signed. As to cooperation with the Office of the Prosecutor since Mr. Khan's taking office on 16 June 2021, a new memorandum of understanding between the Court and the Government following the departure of Ms. Bensouda was signed in August 2021 by Mr. Khan with a view to strengthening cooperation with the Ministry of Justice. Prosecutor Khan then visited Khartoum, where he met with staff at the highest level of authority, in order to ensure justice for victims and displaced people in Darfur.

After several visits to the Sudan, the Prosecutor requested the opening of a liaison office which would include the presence of officials. The Sudan had previously hosted Ms. Bensouda on two occasions and facilitated her work. She met with Government officials and visited the victims and survivors in Darfur camps.

In August 2022, the Prosecutor and his team were hosted in Darfur from 20 to 25 August 2022. Some members of his team travelled to south and central Darfur. They met with state Governors and with local officials in the refugee camps. Other members of the team headed by the Deputy Prosecutor, Judge Nazha Shmeem, met with the Minister of Justice, the Deputy Minister for Foreign Affairs, and the Minister of Culture and Information. They also met with members of the Sovereignty Council and the Governor of Darfur. On 23 August 2022, when the Prosecutor returned from Darfur, he met with the Deputy Chairperson of the Sovereignty Council, after which the Prosecutor made his historic briefing to the Security Council from Khartoum without any restrictions (see S/PV.9113). The next day, on 24 August, the Prosecutor met with the Chairperson of the Sovereignty Council and appeared at a press conference at the Rotana Hotel in Khartoum.

In September 2022, another delegation from the Office of the Prosecutor, comprising nine members, came to Khartoum for a six-day visit, which was followed by many visits from 12 September to 18 December 2022. Another delegation of eight members also visited the Sudan to discuss the issues of coordination on the ground, legal accountability, case management and awareness-raising. That delegation included the Head of the Public Relations Department and visited sites in Zalinji, Bendisi, Makjar, Kilma, Bandis North and South, Kadoum camps and Old Makjar camp.

In addition, a delegation of 12 people led by the Prosecutor had visited Nyala on 21 August and met with the Governor and the security committee. On 22 August they visited the town of Zalinji. Consequently, our cooperation with the ICC was more positive than has been characterized by members of the Court.

The ICC Prosecutor asked the Government of the Sudan for permission to open an office in the Sudan and to send officials there. However, the Court Registrar did not come to the Sudan to finalize the request. The Government of the Sudan is completely ready to do that once the hostilities stop.

The Prosecutor also requested documents, archives, witnesses and evidence on the crimes committed in Darfur and asked for permission to go to the crime scenes. Responses have always been in the affirmative as evidence of our willingness to cooperate and coordinate.

There are several important points that I expected the report to mention, namely, the legislative reform measures taken by the Government of the Sudan to show our cooperation with the ICC, including the relevant amendments made to the 1995 Sudanese criminal law, the 2007 Armed Forces law, and to article 3 of the 1991 Code of Criminal Procedures to bring it in line with ICC requirements of the ICC, as well as the appointment of a specialized Sudanese Prosecutor and the establishment of specialized tribunals to investigate the crimes committed in Darfur.

The report also fails to mention my Government's efforts to protect the civilians in Darfur, including sending joint forces to implement the Juba Peace Agreement and following up on the security situation in the region. The report states that the Sudan did not take notable measures to facilitate cooperation with the Office of the Prosecutor before the events of 15 April 2023, including administrative impediments and a

refusal to work with Sudanese witnesses and authorities or with affected communities. Upon his visit to the Central Darfur state, the Prosecutor said that he would assure General Al-Burhan of his cooperation with the Governors in Darfur and that he saw no obstacles that might hinder that. The Prosecutor's only request was for contact to be established between the Government and the Office of the Prosecutor. That request is to be discussed with the Sudanese authorities in the near future.

On the issue of handing over the three remaining suspects wanted by the ICC whose location is alleged to be unknown, which is mentioned in the report and has been raised by certain delegations, the Minister of Justice assured me yesterday that these individuals are under strict surveillance in a hospital where they are being treated. I duly informed the Prosecutor of these facts when he visited the mission yesterday, at which time we also thoroughly discussed future cooperation.

The Prosecutor's report notes a single option, namely, having the trial of suspects in The Hague and nowhere else. However, in her briefings to the Security Council in 2020 and 2021, former Prosecutor Bensouda had proposed three options from which the Sudan would choose. That will be addressed with the Prosecutor in the near future. As for the five accused persons, their trials will take place either in a Sudanese court, in The Hague, or in an internationally supported hybrid tribunal established by a Council resolution. A memorandum of understanding was signed by the Government of the Sudan and the Prosecutor's Office when the case was referred to the ICC pursuant to resolution 1593 (2005).

As to the case of the three suspects, the Rome Statute does not provide for a statute of limitations for the crimes alleged. Once the comprehensive aggression is over, we could deal with that aspect, keeping in mind that we have additional options that have already been approved by the previous and current Prosecutors, as mentioned previously.

After the revolution, we began to deal with the ICC based on respect for the principle of criminal and legal complementarity where preference is given to trying criminal cases in our national courts under our national criminal law. That principle makes the ICC, as stated by the Prosecutor, the court of last resort and not the court of first instance. Accordingly, the Government of the Sudan wishes to exercise its right to prosecute

the crimes committed in Darfur through its national criminal courts in accordance with international legal criteria under the *ne bis in idem* principle, which is recognized in most national criminal systems and in Article 14 of the International Covenant on Civil and Political Rights.

Finally, under article 90 of the Rome Statute, the Sudanese judiciary has the right to issue judgments against those who perpetrate international crimes within the ICC's jurisdiction. The Government of the Sudan is entitled to receive from the Prosecutor a copy of the information and investigations that are considered primary evidence for justifying the trials. The Prosecutor's view that the Sudanese authorities have not cooperated with his Office by refusing to hand over suspects to be prosecuted in The Hague is not fair given the clarifications I have made today on the scope of cooperation between the Sudan and the Office of the Prosecutor.

In conclusion, there was a discussion on the situation in the Sudan in the United Kingdom Parliament yesterday. In that discussion, Ms. Anita Ferrara, author and expert on transitional justice at the Irish Centre for Human Rights stated,

"Criminal justice for victims of war throughout the world arrives late when the aggressor wins the war. In the short term, transitional justice can be implemented."

She called on the Sudanese parties to start first with transitional justice, and we noted the challenges that entailed. As for criminal justice, it will come in the long term.

**The President:** I now give the floor to Prosecutor Khan to respond to some comments.

**Mr. Khan:** I thank you, Mr. President, for the opportunity to say a few final words and for the comments and observations and also largely support from the members of the Security Council.

I would love to be able to give positive news and to commend cooperation. I would take any opportunity to commend any country, any State, any individual that is bending towards justice and away from criminality. But, unfortunately, I have not been given that opportunity today.

I will try to be brief, because I know that there is an important meeting after this one.

It is a basic principle of international law that every single member knows — that a national authority, a Government, a country cannot pray in aid a lacuna or domestic impediment to fulfil an international law obligation. There is no higher authority in the world in terms of maintaining international peace and security than the Security Council. And it was the Security Council, in 2005, indeed, in paragraph 2 of resolution 1593 (2005), that made it absolutely clear in black and white that the Government of the Sudan and all parties to the conflict shall cooperate fully with and provide necessary assistance to the Court and the Prosecutor pursuant to that resolution. That is an international obligation, which, unfortunately, has been much more honoured in the breach than in the observance.

The writing has been on the wall. I am not making things up. In my last report (see S/PV.9249) and in my address to the Council, I made it very clear that, unfortunately, despite all the promises and all the protocol at the airport, for which I am very grateful, there was on any analysis a clear trend of no cooperation from some cooperation. And what cooperation there was had its high point before October 2021. So, the words that have been uttered have not actually been met, with the greatest of regret, in terms of fulfilment of international law obligations.

An example is that there are 34 requests for assistance that remain outstanding, and those requests have not just come yesterday; they have been outstanding since 2020. As a candid and honest assessment, it is not the case that the events over the past 90 days can gloss over or muddy the waters of non-cooperation that we have seen over a significant period, and particularly from October 2021, because even before April, at the beginning of this year, after my last report, after I appeared in the Council, two missions to the Sudan were cancelled because we did not get visas, and I have raised that issue many times. That is the simple truth and the reality.

I am a real proponent of dynamic complementarity, and when I met General Al-Burhan face to face, it is not the case that I insisted that trials take place in The Hague. I have been on record to say trials should be in the region. They should be as close to the people as possible, and I went further, in fact, and said, subject to judicial orders, I would be open, of course judges would decide, to the trials taking place even by video link from Khartoum. Trials can take place in The Hague with accused appearing by video link, perhaps subject to judicial orders. The point is complementarity is the foundation of the Rome Statute, but there is another important part that we should not look away from: that if there is a determination that a State is unwilling or unable to ensure that international obligations are fulfilled, that if there are not active investigations in relation to genocide, crimes against humanity and war crimes, we must make sure and we must be resolute to ensure that there is accountability to make sure that the promise of “never again” is given effect to.

It therefore pains me and I have no joy in saying that, unfortunately, I am compelled to the conclusion that, at this moment, the Sudan is unwilling and unable to fulfil its obligations. That is why I have announced as clearly as I can that we are progressing to look at and investigate the current allegations. And I reiterate, and that must be my final word, a call on both parties to the conflict and any individual, for the good of the Sudan and for their own sake, to cooperate with me even at this eleventh hour and provide information to fulfil the promise of justice, because that is an opportunity that will not perhaps come again.

I thank the Security Council for the opportunity to say those final remarks.

**The President:** I thank Mr. Khan for his clarification and his comments.

There are no more names inscribed on the list of speakers.

*The meeting rose at 5.05 p.m.*