

11 December 2013



Security Council

SC/11209

Department of Public Information • News and Media Division • New York

Security Council
7080th Meeting* (PM)

INTERNATIONAL CRIMINAL COURT PROSECUTOR TELLS SECURITY COUNCIL VIOLENCE IN DARFUR

WILL NOT END WITHOUT ROBUST DETERMINATION TO APPREHEND PERPETRATORS

She Urges State Parties to Honour Arrest Warrants for Indictees

Crimes in the Darfur region of Sudan would not stop unless the Security Council and parties to the Rome Statute showed robust determination to apprehend their authors, the Prosecutor of the International Criminal Court said today, imploring the 15-member body to press Sudanese authorities to arrest and surrender persons against whom arrest warrants had been issued.

Presenting her Office's eighteenth report, Prosecutor Fatou Bensouda insisted "the time has come for this Council and States parties to seriously devise strategies for arresting those alleged to be responsible for these crimes." It was a serious indictment on both the Council and those parties that President Omar Hassan al-Bashir and others had been able to travel without fear of arrest. The Council's silence, even when notified of failures by States to comply with their obligations, only added insult to Darfur's victims. "We owe it to Darfur's victims to show that we have not abandoned them," she said, underlining that, in the last year alone, 460,000 people had been newly displaced in the region, while killings and abductions were on the rise.

For its part, her Office would not waver in its determination to carry out its mandate, she said. Preparations were on track to start the trial of Abdallah Banda in May 2014. However, its activities in other cases had been limited to preserving evidence and maintaining contacts with witnesses — the only way to ensure a smooth start of judicial proceedings in the event that fugitives were arrested. Her report had made clear that lasting peace in Darfur would be elusive as long as the alleged perpetrators remained at large.

With that in mind, she urged the Council to respond to the eight formal communications from the Pre-Trial Chamber, including the non-cooperation of the Sudanese Government in the *Harun and Kushayb* case, which had contributed to Sudan's determination to ignore the Council. The Assembly of States Parties' Omnibus resolution from its 2013 session had encouraged strengthening the Council's relationship with the Court, notably through support for international justice in peacekeeping mandates, the holding of annual open debates on the Court and identifying other means to institutionalize cooperation.

In the ensuing debate, delegates decried that the security situation in Darfur had not improved, amid inter-communal fighting, reports of aerial strikes by Sudanese authorities and a recent attack on the African Union-United Nations Hybrid Operation in Darfur (UNAMID) that had killed a Rwandan peacekeeper. Several speakers pressed Sudan to enforce the Court's arrest warrants, including for President Al-Bashir. Others took a broader view, calling for all United Nations Members to cooperate with the Court, and avoid politicizing the situation, especially in the fight against impunity.

In that context, the representative of the Russian Federation acknowledged that the Court's work complemented that of national institutions in combating impunity. To conduct a careful and unbiased investigation, he said, it must look into the crimes of Sudanese officials, as well as rebels.

Still others stressed that the situation in Darfur was complicated, and that the only way to achieve lasting peace was through the ongoing political process. Rwanda's delegate urged the Council to support the Joint Special Representative in bringing all stakeholders around the Doha Document for Peace. His country had endorsed all seven decisions adopted by African Union Heads of States and Government on the issue of Court indictments, he said, reiterating the Union's view that justice should be pursued in way that did not impede lasting peace.

The representative of Sudan, directing his statement to the Council alone, clarified that his Government's participation in today's meeting in no way meant that it recognized the Court or intended to cooperate with it. The Prosecutor had ignored all the positive developments that had taken place in Darfur as a result of the implementation of the Doha Document by transitional authorities, including measures taken by the Special Court of Darfur. He also pointed out that she had not mentioned the willingness and ability of the Sudanese judicial system to fight impunity.

He reminded the Council that African leaders had adopted a resolution stating no African president should be brought before the Court while in office. Failure to respect that resolution contravened the right of Africans to democracy and freedom.

Also speaking today were the representatives of Pakistan, Azerbaijan, China, United Kingdom, Luxembourg, Guatemala, Australia, Argentina, Republic of Korea, Morocco, Togo, United States and France.

The meeting began at 3:05 p.m. and ended at 4:45 p.m.

Background

The Security Council met today to hear a briefing by the Prosecutor of the International Criminal Court.

Briefing

FATOU BENSOUDA, Prosecutor of the International Criminal Court, presenting her Office's eighteenth report, said that the adoption of resolution 1593 (2005) had represented hope for Darfur's victims that their suffering would end, those responsible for crimes committed would be held accountable, and, above all, lasting peace and security would return to the area. Sadly, with each report, those hopes had faded, as the situation in Darfur continued to deteriorate and the plight of victims went from bad to worse. Such circumstances posed a threat to international peace and security. As well, conditions in Abyei and along the border between Sudan and South Sudan had deteriorated. In 10 years, the situation in Darfur alone had cost the United Nations and aid groups more than \$10.5 billion, and the lives of 47 aid workers.

Attacks on peacekeepers appeared to have become the norm, with a record 57 killings, she said, noting that just during the reporting period, peacekeepers from the United Republic of Tanzania, Rwanda, Zambia and Senegal had been killed. Not enough appeared to have been done to identify those responsible, despite the repeated insistence of the United Nations and African Union that Sudan must investigate. She encouraged those two organizations to share information from their internal investigations with her Office "in the interests of justice". Further, over the last year, 460,000 people had been newly displaced in Darfur amid a growing number of people killed, abducted and dislocated.

"All these are crimes that will not stop unless this Council and Rome Statute States parties show a

determination to apprehend their authors,” she insisted, stressing that Sudan’s failure to cooperate with the Court was but one of many incidents of its Government’s continued failure — or refusal to implement Council decisions. Her Office had done its part and it was now up to the Council and States parties to heed the cries of the millions of victims of crimes, which continued unabated in Darfur. “The time has come for this Council and States parties to seriously devise strategies for arresting those alleged to be responsible for these crimes,” she implored. It was a “serious” indictment on those parties that President Omar Hassan al-Bashir, and others, had been able to travel without fear of arrest.

The Council’s silence, even when notified of clear failures or violations by States of their obligations to comply with its resolutions, only added insult to Darfur’s victims, she continued. Despite such obstacles, her Office’s determination to carry out its mandate would not waver. “We owe it to Darfur’s victims to show them that we have not abandoned them and that we may be their only hope for justice,” she asserted. To that end, preparations were on track for the trial of Abdallah Banda, slated to start on 5 May 2014. Delivering a message to all other Darfur fugitives, she said: “You have nothing to fear coming to ICC if you are innocent.” Any person brought before it would be afforded all the requisite resources to ensure a fair trial that respected due process guarantees.

The Council’s failure to pressure the Government of Sudan to arrest and surrender persons against whom arrest warrants had been issued was an ongoing challenge, she pointed out. Her Office’s activities had been limited to preserving evidence and maintaining contacts with witnesses — the only way a smooth “kick-start” of judicial proceedings could be ensured in the event the fugitives were arrested. The report provided an overview of alleged crimes which cried out for full investigations, making it clear that lasting peace in Darfur would remain elusive as long as the alleged perpetrators remained at large. The alleged crimes included attacks by the Ministry of Defence and rebels alike.

Turning to the plight of displaced persons, she said there was reason to believe that the crisis was worse than imagined, exacerbated by a lack of access to food, water and the most basic shelter. Allegations of food aid deliveries being stolen by the Government’s Humanitarian Aid Commission were also a concern, as that had reportedly left hundreds of thousands of people suffering. In addition, civilians bore the brunt of aerial attacks, she said, citing a survey identifying violence in Darfur as the major cause of death among refugees.

Her Office had also noted growing clashes among Arab tribes that had, in the past, supported the Government’s militia/Janjaweed, she said. Moreover, the “pervasive and corrosive” effect of organized sexual and gender-based violence against women and girls remained seriously underreported. Attacks on humanitarian aid workers and peacekeepers had prevented the United Nations Mission in Darfur from executing its mandate.

In closing, she said the Council had yet to respond to eight formal communications from the Pre-Trial Chamber, including the non-cooperation of the Sudanese Government in the *Harun and Kushayb* case, which contributed to the country’s determination to ignore the Council. The Assembly of States Parties’ Omnibus resolution from its 2013 session had encouraged strengthening the Council’s relationship with the Court, such as through support for international justice in peacekeeping mandates, the holding of annual open debates on the Court and identifying other means to institutionalize cooperation.

Statements

DAFFA-ALLA ELHAG ALI OSMAN (Sudan) said that his country’s participation did not mean that Sudan recognized the International Criminal Court or intended to cooperate with it. Sudan was not a State party to the Rome Statute. Therefore, his statement was addressed to the Council alone. The Prosecutor had addressed the Council as if she were “ordering the members States”, he said. Her briefing had not addressed the crux of the matter and had deviated into relations between Sudan and South Sudan, as well as the status of Abyei, as if the Prosecutor had become the judge. The briefing reaffirmed that the Court had become a political rival of Sudan.

Further, he said, the Prosecutor had not cited the sources of her information. The briefing had ignored all the positive developments that had taken place in Darfur as a result of the implementation of the Doha Document for Peace in Darfur by the transitional authorities, including measures taken by the Special Court of Darfur. The Prosecutor also had not mentioned the willingness and ability of the Sudanese judicial system to fight impunity.

At the emergency summit held at Addis Ababa this past October, he continued, the leaders of the African Union had reminded the international community that they had lost confidence in the International Criminal Court because of the politicization of international justice. African leaders had adopted a resolution that no African president should be brought before the Court while in office. Failure to respect that resolution ran counter to the right of the people of Africa to democracy and freedom. Sudan had provided the Council information on measures taken by its Special Court that resulted in sentences of capital punishment against six people.

MASOOD KHAN (Pakistan) said that, although his country was not a party to the Rome Statute, he recognized the obligations of the States parties to the International Criminal Court. Welcoming the steps taken to implement the Doha Document and the establishment of Sudan's national human rights commission, he added that the relationship between the International Criminal Court and the Security Council should be managed correctly so that the independence of the Court not be compromised. A sustainable and viable peace in Darfur required a multi-pronged approach, he said, acknowledging that regional and subregional arrangements contributed to accountability. Stating support for the United Nations and the African Union's endeavours in Darfur, he said that the League of Arab States and the Organization of Islamic Cooperation should also be associated with those efforts. All pledges made at the Doha donor conference should be fulfilled at the earliest and the Council should continue to encourage the engagement of the mediator with the armed groups. Noting that recent inter-tribal clashes over natural resources had become a source of conflict in Darfur, he called on the international community to take bold steps, such as lifting the debilitating bilateral sanctions, to promote economic development in Darfur.

AGSHIN MEHDIYEV (Azerbaijan) said that though some steps had been taken to defuse inter-communal tensions and promote reconciliation in Darfur, the security situation continued to be volatile. The intensification of attacks by non-signatory armed groups and their attempts to expand combat operations to other regions of Sudan had resulted in civilian casualties, substantial population displacement, looting of civilian property and the deterioration of the humanitarian situation on the ground. Further, the persistent denial of non-signatory armed groups to join the peace process had seriously hampered the prospects for progress in the implementation of the Doha Document. Strongly condemning all attacks on United Nations staff members and aid workers, he urged that the ongoing investigation must be finalized in order to bring the perpetrators to justice and prevent impunity for offences.

ZHAO YONG (China) noted the complicated situation in Darfur and said that the ongoing political process was key to promoting a lasting peace, which would lay the ground for justice. All international efforts should promote that process. In that regard, Sudan played a key role. It had made several efforts, including diffusing inter-ethnic conflict. Rebels had reiterated that they were ready to maintain the territorial integrity of Sudan. For its part, the international community must provide support and assistance to the Sudanese Government, he said, voicing hope that the Court would play a constructive role to that end. As well, the Council should pay attention to the views of the African Union, League of Arab States, and other countries and organizations in the region.

PAUL MCKELL (United Kingdom), acknowledging that the situation in Darfur had not improved since June, amid heavy inter-communal fighting and reports of aerial strikes by the Government of Sudan, underscored the continued attacks against humanitarian aid workers and peacekeepers. Citing the 24 November attack on the African Union-United Nations Hybrid Operation in Darfur (UNAMID), which had resulted in the death of one Rwandan peacekeeper, he called on all parties to ensure the mission was granted full and unfettered access across Darfur. He also expressed deep concern that the Sudanese Government had shielded those indicted by the Court. Sudan must cooperate with the Court, including the enforcement of the five separate arrest warrants, he stressed. The report's reference to sexual violence was disturbing, as well. More must be done to both combat such abuse and address the culture of impunity that

fostered it. That culture must be replaced by a culture of accountability. He urged States to cooperate with the Court to ensure that the perpetrators were held accountable.

EVGENY T. ZAGAYNOV (Russian Federation), acknowledging that the Court's work complemented that of national institutions in combating impunity, said that in order to conduct a careful and unbiased investigation, the Court must investigate the crimes of Sudanese officials, as well as rebels. In the eight years since the adoption of resolution 1593 (2005), the Court had achieved some success in investigating Sudanese cases. He noted the importance of States discharging their corresponding obligations and welcomed the efforts of the Prosecutor to bring to justice the perpetrators of the attacks on peacekeepers. The Court's discharge of its functions should continue to harmoniously integrate with the post-conflict reconstruction process.

SYLVIE LUCAS (Luxembourg) said that since the Security Council had referred the case of Sudan to the International Criminal Court, the Prosecutor's reports gave the Council an opportunity to note progress made, as well as the obstacles it faced. She expressed regret about the non-cooperation of the Government of Sudan with the Court. During the last six months, the security situation in Darfur had continued to deteriorate significantly, with conflicts more frequent and large numbers of civilians continuing to be displaced. Condemning the attacks against UNAMID, she added that it was unacceptable that the Sudanese Government had not cooperated with the Court, while also refusing to take national measures to combat impunity. One way in which the Council could help the Court was to answer the correspondence the Court had addressed to it on matters of non-cooperation. The silence of the Council was not encouraging.

GERT ROSENTHAL (Guatemala) welcomed the Prosecutor's efforts to end impunity in Darfur, in line with resolution 2113 (2013), which outlined the dangerous situation faced by UNAMID. The report also referred to aerial bombardment carried out by Sudanese Armed Forces, notably against civilians. In addition, tension between those forces and rebels continued, which, along with inter-communal clashes over natural resources, only increased instability. He was alarmed at the incidence of sexual and gender-based violence, among other abuses, and lamented the loss of 13 peacekeepers and 47 humanitarian workers, saying that their deaths warranted exhaustive investigations. "We cannot have peace without justice", he said, expressing concern that arrest warrants had not been acted upon. He urged the Government of Sudan to cooperate with resolution 1593 (2005). Cooperation between the Council and the Court must be strengthened, both legally and politically.

MICHAEL BLISS (Australia) said the ongoing failure to arrest and surrender President Al-Bashir, Defence Minister Abdelrahim Mohamed Hussein, Governor of Southern Kordofan Ahmed Harun and Ali Kushayb, was of particular concern, noting that President Al-Bashir and Defence Minister Hussein continued to travel outside of Sudan, including to certain International Criminal Court States parties, without arrest. For eight years, Sudan had ignored its obligations under resolution 1593 (2005). "The inescapable conclusion is, as Mrs. Bensouda has put it, that the Council's silence and inaction has contributed to Sudan's continued determination to ignore this body," he said. The Council should take concrete measures to assist the Court on Darfur-related matters. To that end, the Council's Sudan sanctions committee should give greater consideration to how it could assist the Court on the execution of the outstanding arrest warrants. "But, we can do more," he stressed, emphasizing the need to establish a Council forum for legal experts to discuss Court matters and for Member States to address their differences by adopting a flexible and constructive approach.

MARÍA CRISTINA PERCEVAL (Argentina) recalled that the Council, in resolution 2091 (2013), had stated that Darfur was in an urgent humanitarian crisis, while in resolution 2113 (2013), it had recalled the importance of ending impunity and ensuring justice for crimes committed in that area. On the issue of cooperation, she said the Court and the Prosecutor must "complement, not confront". Along the same lines, the Government of Sudan must cooperate with the Court, providing the necessary assistance. States parties and all United Nations Members were called on to cooperate with the Court, and not to politicize the situation, especially in the fight against impunity. On cooperation with arrest warrants, she said none of the eight communications from the Court to the Council had received a response. The Council had committed to provide follow-up, yet it had not agreed on a mechanism by which to carry out that responsibility. "We must address this matter," she said.

PAIK JI-AH (Republic of Korea) said that the absence of cooperation between the parties concerned and the lack of political will of the Sudanese Government remained major obstacles in the work of the International Criminal Court. It was regrettable that, as new allegations were being reported in the region, including aerial and ground attacks on civilians, arrest warrants issued by the Court had not been fully executed. Further, charges that the Sudanese Government was allowing militia to loot and kill with impunity was of particular concern. The Prosecutor should keep up her efforts until justice was delivered to the victims. As well, the Court needed the robust support of the Council and it was incumbent upon Sudan to fully cooperate with the Court, in accordance with resolution 1593 (2005).

ABDERRAZZAK LAASSEL (Morocco), welcoming the implementation of the Doha Document, said that the judicial mechanisms in Sudan had been reinvigorated and the increased involvement of UNAMID and the Government of Sudan had mitigated the tensions in the country. However, the increased attacks on UNAMID were troubling and the instigators and perpetrators must be brought to justice. He called for a political settlement by all parties concerned and reaffirmed his country's respect for the territorial integrity and sovereignty of Sudan. The decision of the Court to blame President Al-Bashir was not accepted internationally. It was time, then, to look for a procedure that facilitated respect for international justice without threatening the peace and stability of the region.

LAWRENCE MANZI (Rwanda) voiced concern about reported human rights violations, hostilities between the Government and armed groups, as well as inter-communal violence over land. The Council "should not squander" opportunities to achieve peace in Darfur, he said, urging members to rally behind efforts by the Joint Special Representative to bring all stakeholders around the Doha Document for Peace. The Sudanese Government must redouble efforts to implement the Document in the areas of security, land ownership and civil service reforms. It was equally important for donors to honour their commitments. The Court and the Council must support the Special Prosecutor for Darfur, notably by monitoring cases under the Doha Document or ensuring that Sudan regularly informed the Council on the status of investigations and prosecutions. His country had endorsed all seven decisions adopted by African Union Heads of States and Government on the issue of Court indictments, he said, reiterating the Union's view that justice should be pursued in a way that did not impede lasting peace.

KODJO MENAN (Togo) reaffirmed the African Union's position regarding the status of States vis-à-vis the Court. As regards the *Banda* case, he hoped to see development of the Court's case law. He regretted the Council had not followed up on cases it had sent to the Court, stressing that it must acknowledge it had received the Court's communications. He also urged States to respect the principle of complementarity. As for ongoing investigations, he appealed for an end to inter-communal clashes and human rights violations with regard to the militia, urging the Prosecutor to advance investigations into those crimes, as well as into the 2007 killing of a peacekeeper. States must do more to bring parties together, especially those outside the Doha agreements, to ensure a political settlement.

JEFFREY DELAURENTIS (United States) said that the Prosecutor's efforts to secure justice were especially commendable given the Sudanese Government's continued non-cooperation. Justice would be the cornerstone of any sustainable peace agreement in Darfur. Lasting impunity went hand in hand with continued violence and insecurity. The Prosecutor's report detailed the Government's blatant disregard for its obligation to cooperate with the International Criminal Court. Sudan had offered no meaningful measure of justice at the national level. In a direct affront to the charges levelled against them, the individuals subject to the arrest warrants continued to cross borders. The international community must ensure that those individuals not be invited to their countries and must not facilitate travel by them.

GÉRARD ARAUD (France), Council President, spoke in his national capacity, saying that impunity continued in Darfur with women and children suffering the most. Despite arrest warrants, those charged with crimes against humanity and genocide continued to be at large. The current meeting was an opportunity for the Council to renew its full confidence in the Prosecutor, and her concerns regarding aerial bombardments, sexual violence and the lack of cooperation of the Sudanese Government must be taken seriously. Since the last meeting, the security situation in Darfur had deteriorated considerably and the

peace process had not seen any progress. The image of the Organization and the effectiveness of international justice were at stake.

Ms. BENSOUDA, responding to comments by the representative of Sudan, said the Security Council was not the forum to address issues of “willingness and ability”. That was a matter for the Court’s judges to assess on a case-by-case basis. Moreover, the representative had stated that his Government did not respect the Council’s decision to mandate the Court to investigate and prosecute crimes committed in Darfur. The Government of Sudan was aware of allegations against several people, including President Al-Bashir, the nature of which had been made public for nearly nine years. “And yet, nothing on these cases has been done”, she stressed, calling for the Sudanese Government to bring proof of its willingness and ability to the Court’s judges. The country’s refusal to dispute the admissibility of the cases before the Court, or to arrest and surrender the concerned individuals, was an obstacle for her Office and the Council alike. “We cannot afford to ignore this challenge any longer,” she said.

* * * * *

* The 7079th Meeting was closed.

For information media • not an official record