



Security Council

Sixty-seventh year

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Thursday, 13 December 2012, 10 a.m.

New York

President: Mr. Loulichki (Morocco)

Members:

Azerbaijan	Mr. Mehdiyev
China	Mr. Sun Xiaobo
Colombia	Mr. Alzate
France	Mr. Briens
Germany	Mr. Wittig
Guatemala	Mr. Rosenthal
India	Mr. Vinay Kumar
Pakistan	Mr. Masood Khan
Portugal	Mr. Cabral
Russian Federation	Mr. Karev
South Africa	Mr. Tladi
Togo	Mr. Menan
United Kingdom of Great Britain and Northern Ireland	Mr. Parham
United States of America	Mr. DeLaurentis

Agenda

Reports of the Secretary-General on the Sudan

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The meeting was called to order at 10.15 a.m.

Adoption of the agenda

The agenda was adopted.

Reports of the Secretary-General on the Sudan

The President (*spoke in Arabic*): Under rule 37 of the Council's provisional rules of procedure, I invite the representative of the Sudan to participate in this meeting.

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

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

I now give the floor to Ms. Bensouda.

Ms. Bensouda: I am briefing the Security Council as the second Prosecutor of the International Criminal Court (ICC) to address the situation of Darfur, in the Sudan, which the Council referred to my Office through resolution 1593 (2005). This is my Office's sixteenth briefing to the Security Council on the subject of Darfur.

The situation in Darfur continues to be of serious concern to me and my Office. In my report, I have indicated specific incidents of concern, which seem to represent an ongoing pattern of crimes committed pursuant to the Government-avowed goal of stopping the rebellion in Darfur. I must reiterate that these alleged ongoing crimes, similar to those already considered by the judges of the International Criminal Court on five separate applications, may constitute war crimes, crimes against humanity and genocide. My Office will consider whether further investigations and additional applications for arrest warrants are necessary to address ongoing crimes, including those undertaken with the aim of thwarting the delivery of humanitarian aid, attacks on peacekeepers of the African Union-United Nations Hybrid Operation in Darfur, as well as bombardments and other direct attacks on civilian populations. The words of the Government of the Sudan's representatives, promising further peace initiatives, are undermined by actions on the ground that show an ongoing commitment to crimes against civilians as a solution to the Government's problems in Darfur.

The Council should be even more concerned about the situation in Darfur, given that crimes continue to be committed, including by those already indicted by the Court. The Council referred the situation in Darfur because of its firm belief that the justice process is an essential component of any strategy aimed at truly stopping ongoing crimes and achieving peace in Darfur. We have always believed the referral to be a joint endeavour of the Council and the Court to contribute to lasting peace in Darfur through investigation and prosecution of those who bear the greatest responsibility for the most serious crimes. Indeed, in this and other contexts, the Council has reaffirmed the vital importance of promoting justice and the rule of law, including respect for human rights, as an indispensable element of lasting peace. My Office and the Court as a whole have done their part in executing the mandate given by this Council in accordance with the Rome Statute. The question that remains to be answered is: How many more civilians must be killed, injured and displaced for the Council to be spurred into doing its part?

There are no words to properly express the frustration of Darfur's victims, which we share, about the lack of any meaningful progress towards arresting those indicted by the Court. The failure of the Government of the Sudan to implement the five arrest warrants seems symbolic of its ongoing commitment to a military solution in Darfur, which has translated into a strategy aimed at attacking civilian populations over the past 10 years, with tragic results. The victims of Darfur crimes can hardly wait for the day that fragmentation and indecision will be replaced by the decisive, concrete and tangible actions they expect from the Council.

Investigating the Darfur situation was an enormous challenge for the Office and a huge sacrifice for the witnesses and victims, whose lives remain at risk as a result of their interaction with the Court. The question they ask is: Were their sacrifices in vain?

In its resolution 2063 (2012), the Council expressed concerns about ongoing impunity and the lack of any progress on national proceedings to date, after nearly eight years of reported efforts on the part of the Government of the Sudan authorities. It should be clear to the Council that the Government of the Sudan is neither prepared to hand over the suspects nor to prosecute them for their crimes.

Despite the challenges we faced, including non-cooperation by the Government of the Sudan, the Office conducted independent and impartial investigations and submitted its evidence to the judges. Contrary to the often-repeated allegations of bias and politicization of the Office's investigative activities, the judges of the Pre-Trial Chamber independently evaluated the evidence to determine whether there were reasonable grounds to believe that particular individuals bore individual criminal responsibility for these crimes.

Having considered all the evidence, the judges concluded that Government of the Sudan forces committed war crimes, crimes against humanity and genocide in Darfur, following a strategy adopted at the highest echelons of the State apparatus. The findings on genocide, moreover, were entered following a ruling by the five-member bench of the Appeals Chamber. The Pre-Trial Chamber identified the individuals who must face justice and issued arrest warrants for a militia/Janjaweed leader, Ali Kushayb, who reported to the then Minister of State for the Interior, Ahmed Harun, who in turn reported to the then Minister of the Interior Abdel Raheem Muhammad Hussein, who reported to President Al-Bashir. Their responsibility is not a mere consequence of their official roles. In all of these cases, there are witnesses who describe in detail their active participation in the strategy to commit crimes as well as in the execution of that strategy.

The Judges of the ICC have formally communicated six times to the Council without receiving any response. That includes a 25 May 2010 decision of the Pre-Trial Chamber, informing the Council about the lack of cooperation by the Republic of the Sudan, in particular in the *Harun* and *Kushayb* cases; two 27 August 2010 decisions of the Pre-Trial Chamber informing the Council and the Rome Statute Assembly of States Parties about President Al-Bashir's visit to Chad and of his presence in the territory of the Republic of Kenya; the 12 May 2011 decision of the Pre-Trial Chamber informing the Council and the Rome Statute Assembly of States Parties about his visit to Djibouti; the 12 December 2011 decision of the Pre-Trial Chamber pursuant to article 87(7) of the Rome Statute on the failure of the Republic of Malawi to comply with the cooperation requests issued by the Court with respect to the arrest and surrender of President Al-Bashir; and the 13 December 2011 decision of the Pre-Trial Chamber pursuant to article 87(7) of the Rome Statute on the failure of the Republic of Chad to comply with the

cooperation requests issued by the Court with respect to the arrest and surrender of President Al-Bashir.

My Office and I personally remain committed to working with regional organizations endeavouring to contribute to a comprehensive solution, including the League of Arab States and the African Union. The recommendations of the African Union High-Level Implementation Panel for Sudan will be one among other points for discussion that I intend to raise in my interactions with former President Mbeki and the African Union Commission Chairperson, Ms. Nkosazana Dlamini-Zuma. The recommendations of the African Union High-Level Panel on justice, if implemented, would go a long way towards addressing the challenge of the deliberate imposition and tolerance of impunity not only in Darfur, but in the Sudan as a whole. My Office undertakes this interaction with the African Union on its justice recommendations pursuant to its policy of positive complementarity.

Investigating the Darfur situation remains an enormous challenge for the Office. Despite these challenges, we managed to conduct full investigations that have led to five arrest warrants — two against the same individual — and three summonses to appear. Good progress has been made towards the start of the trial for two of the three individuals accused of war crimes in the rebel attack on the African Union peacekeeping base at Haskanita, in Northern Darfur. I expect that trial to begin in 2013, although the defence has asked for its postponement until 2014. The investigation and preparation for the trial have involved unique challenges, including the translation of all materials for the defence into Zaghawa, a tribal language with no written form. That work demonstrates the commitment of the Office and the Court to a fair trial.

I look forward to the opportunity to present to the judges the substantial and voluminous evidence gathered in the other four cases, including following the arrest and surrender of four individuals sought by the Court. That is an essential step towards delivering justice for Darfur's victims. I believe it will also shed light on the obstacles facing other international processes, such as those endeavouring to bring relief to victims through the delivery of humanitarian aid or the conduct of a peace process that aims to be principled and substantive. The justice process is an essential component of any strategy aimed at truly stopping ongoing crimes, by publicly exposing to the highest

independent judicial standards the reasons why and how those crimes have been committed, who has been responsible for them, and how they must be stopped.

I have been encouraged of late by my participation in discussions with Rome Statute States parties and others aimed at galvanizing action to ensure greater cooperation in the Darfur and other Council-referred situations, including through the implementation of outstanding arrest warrants. I am committed to working with both States parties and Non-States parties, inside and outside of the Security Council, to push those processes forward.

The President (*spoke in Arabic*): I thank Prosecutor Bensouda for her briefing.

I now give the floor to the representative of the Sudan.

Mr. Osman (Sudan) (*spoke in Arabic*): At the outset, I should like very clearly to emphasize, as we have done in previous statements, that our participation in this meeting in no way indicates recognition or any sort of interaction with the International Criminal Court (ICC). As everyone is aware, the Sudan is not party to the Rome Statute, which established the Court. Therefore, like a significant number of Member States on the Security Council, the Sudan has not recognized the ICC or ratified its Statute. Eight Member States currently serving on the Council are not parties to the Rome Statute. Our participation today is merely to correct the false information and concepts contained in the sixteenth report of the ICC Prosecutor to the Council. I would like that to be reflected in the record of this meeting.

We had expected a different approach from the Court's new Prosecutor, unlike the misguided approach adopted by the previous Prosecutor. We had expected the new Prosecutor to have refrained from making unsubstantiated claims that were not supported by facts on the ground. Unfortunately, however, the sixteenth report includes the same erroneous concepts that completely contradict the reality in Darfur today. The Council might wonder what the facts are that lead me to say that. I shall tell the Council.

More than 10 persons from Darfur, from the Fur and Zaghawa tribes, currently serve as ministers in the central Government in Khartoum. In fact, our country's Vice-President is from Darfur. The Minister of Finance is from Darfur. The Cabinet Minister is from Darfur. In addition, the Minister of Justice himself is from

the Zaghawa tribe — a devoted Darfurian and one of the most distinguished members of the Zaghawa tribe — which the Court alleges has been the victim of ethnic cleansing. The Minister of Federal Governance is from Darfur. The Federal Minister of Health is from Darfur. Those are the facts on the ground and the state of affairs we refer to when we say that what we are hearing is a litany that is entirely unsupported by logic or facts on the ground. Moreover, I should like to mention that five of the states in Darfur are governed by governors from Darfur itself. All members of the Governments of the states are from the various groups and tribes in Darfur. Therefore, where is the deteriorating situation we read about in wholly baseless reports?

As to the most glaring contradictions in the sixteenth report — and this is not an exclusive list — paragraph 15 of the report refers to so-called attacks by the Government and rebel groups against camps for internally displaced persons in Darfur, during which theft, rape and destruction of property took place. In that connection, I would refer the members of the Council to refer to the reports of the Secretary-General on Darfur prepared by the African Union-United Nations Hybrid Operation in Darfur (UNAMID), which is currently on the ground and which is the mission with the proper mandate from the United Nations concerning Darfur. Being on the ground, it does not prepare its reports by remote control while relying on imaginary figures. It depends and relies on international officials working on the ground throughout Darfur.

With regard to the two most recent reports submitted by the mission in Darfur, the report issued on 16 July (S/2012/548) reaffirms the stable situation there and requests the Security Council to reduce the military component of UNAMID in the light of the established security. The most recent report (S/2012/771), issued on 16 October, also reaffirms the stable situation except for some isolated incidents, which were tribal disputes in certain areas.

I therefore ask members of the Council: Which reports should we trust — the Secretary-General's reports submitted by the current mission in Darfur, as I explained, or those of the humanitarian aid coordinators of the Office for the Coordination of Humanitarian Affairs? I met yesterday with the head of its office in Khartoum, Mr. Mark Cutts, in my own office here. He reaffirmed the return of 200,000 internally displaced persons and refugees in the course of this year. How

could they have returned if the situation was unstable and insecure and if atrocities were being committed in Darfur? Should we believe those reports or anonymous ones whose sources we do not know. The right answer is, of course, that the reports of the United Nations missions in the Sudan are more credible.

The report intentionally cites disinformation in describing events that took place in Kabkabiya, Kutum and Mellit. In paragraph 16, the report ascribes such events to what it calls "militias", although most of the events were, in fact, tribal disputes. Clashes among farmers and herders in Darfur are as old as time. The Government, in coordination with the Darfur Regional Authority, established pursuant to the Doha Document for Peace in Darfur, has made significant efforts to contain or put an end to many of those tribal conflicts. We are striving to prevent such clashes through development and the provision of water sources by digging wells, by creating model villages and by setting up nomad crossings through farming areas.

In paragraph 18, the report mentions that there is widespread gender-based violence in Darfur. It falsely accuses the Sudanese Security Forces of such acts. It alleges that some such information has been included in United Nations reports but does not mention which reports or which United Nations offices prepared the reports. In that connection, we would like to underscore our complete rejection of such falsification and defamation on the basis of false, incorrect and anonymous sources. Needless to say, such practices contradict the most basic principles of justice and law, namely, the verification of facts and evidence before making random accusations.

So one reason why we are participating in this meeting is to draw the attention of Council members to the danger of such a shameful approach, which is still being taken by the Office of the Prosecutor despite the significant and positive changes that have taken place in Darfur and the prevailing stability and security in most of the region following the signing and entry into force of the Doha peace agreement.

In addition, the attacks on UNAMID and some humanitarian workers were all acts of illegal armed groups. When they occurred, the Government of the Sudan was the first to declare its cooperation and strive to arrest the perpetrators and bring them to justice. Unfortunately, the report of the Prosecutor before the Council refers to this issue in paragraphs 21, 22 and 23 without naming the unknown armed groups that carried

out those acts. That represents a dishonest attempt to expand the scope of the crimes and to imply thereby that the situation in Darfur continues to deteriorate and that it represents a threat to international peace and security. That is all untrue.

In that regard, I underscore the problems in the relationship between the ICC and the Security Council and its negative implications. The ICC is a judicial body, whose terms of reference are supposedly set out in the Rome Statute, while the Security Council is a political entity, whose mandate for the maintenance of international peace and security derives from the Charter of the United Nations. We avoid linking those two bodies because linking a political and a judicial body distorts and flouts the principles of justice.

The necessary independence of judicial bodies must never be questioned. As on previous occasions, we therefore reaffirm that the referral of the dispute in Darfur to the ICC was a politicization of international justice. We also underscore the fact that the Darfur conflict is an internal matter that has not gone beyond the borders of the Sudan and has not in any way threatened international peace and security. The Security Council's consideration of that situation on the basis of such a false assumption is wrong and unacceptable.

Let me refer to the allegations in the Prosecutor's report concerning the so-called lack of cooperation by the Government of the Sudan and its non-compliance with ICC decisions. Those are illogical and unacceptable because, as I have said, the Sudan, like many other States, including members of the Council, is not a member of the Court. In addition, we recall the reservations expressed by members of the Council regarding the Rome Statute, specifically insofar as the current exercise of its jurisdiction may directly affect the sovereignty of those States, including through gross violations of the noble principles of international law providing for the respect of the privileges and immunities of Heads of States. The Sudan is therefore not concerned with the findings of the Court.

As I have noted, the situation in Darfur today is completely different from what it was in 2005, when the Council adopted the mistaken decision to refer that situation to the ICC. The Sudan has come a long way in implementing the Doha Document for Peace in Darfur, one of the most important pillars of which is justice and reconciliation. It includes clear provisions for effective national legal steps to be taken with regard

to any crimes that might have taken place in Darfur. In that connection, I recall the appointment of the Special Prosecutor to investigate alleged war crimes in Darfur and the establishment of branch judicial offices in the five states of Darfur for that purpose.

We also recall that the Doha Document for Peace in Darfur stipulates, in paragraph 295, that

“immunities enjoyed by persons by virtue of their official status or functions shall not obstruct the speedy dispensation of justice nor shall they prevent the combating of impunity”.

We signed the Document and are one of the original parties to it. In addition, the Doha Document includes clear commitments concerning reconciliation and settlement as primary elements for repairing the social fabric and establishing justice. All judicial mechanisms stipulated in that agreement in the context of support provided by the central Government to the Transitional Darfur Authority have started their work, with the welcome participation of civil society organizations and various constituencies in Darfur.

We are all agreed that peace is the essential foundation for upholding justice and stability. Accordingly, the Government of the Sudan has expanded and continues to expand the umbrella of the Doha Document for Peace in Darfur so that those rebel groups that have not yet joined the path of peace may do so. We therefore look to the Security Council to play a greater role in urging those rebel movements to come to the negotiating table so as to turn the page on conflict and to begin a new chapter of peace in which all parties, including the Government and former armed groups, shall work together to realize development and reconstruction in Darfur for the benefit of the entire population.

We hope to hold a special donors’ conference for Darfur in sisterly Qatar in the near future.

In conclusion, we have often repeated in meetings of the Council and the General Assembly that the ICC has become a tool exploited to certain political ends. That position has been proven correct by many developments, most recently last month when a State which is a member of the Security Council asked the Palestinian Authority not to proceed to the ICC in exchange for a vote in favour of General Assembly resolution 67/19 recognizing the State of Palestine and granting it non-member observer State status in the United Nations. The ICC has been exploited since its

inception for political purposes, as has been proven by historical facts. The Court is being exploited every day to political ends entirely unrelated to justice. It is being used as an instrument of blackmail and to undermine the interests of smaller States and to violate their sovereignty. I ask, therefore, what kind of international justice can we expect from that Court?

The President (*spoke in Arabic*): I shall now give the floor to the members of the Council.

Mr. Masood Khan (Pakistan): We welcome the Chief Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, to the Council and thank her for her briefing. We have taken careful note of the sixteenth report of the Prosecutor of the International Criminal Court, submitted to the Security Council pursuant to resolution 1593 (2005). We also heard the statement of the Permanent Representative of the Sudan.

Like several other members of the Council, Pakistan is not a signatory to the statute of the International Criminal Court. However, Pakistan acknowledges the rights and obligations of the States parties to the ICC.

Darfur remains one of the most complicated and intractable issues on the agenda of the Security Council. Darfur and other parts of the Sudan are suffering the tragic consequences of that dispute. Pakistan supports a durable and peaceful resolution of the situation in Darfur through an inclusive political process that respects and upholds the unity, sovereignty and territorial integrity of the Sudan. The people of the Sudan will benefit from conditions of peace and stability in Darfur. Creation of such conditions is also vital for the security and stability of the entire region.

The goal of durable peace in Darfur can be realized only through a comprehensive, multipronged strategy. Such a strategy should provide impetus to the political process, promote a peaceful solution through dialogue, justice and reconciliation, establish a conducive security situation and address the human rights and humanitarian aspects of the conflict in Darfur.

We reiterate our support for the efforts of the United Nations, as well as the African Union, particularly its High-level Implementation Panel, to achieve peace, stability, justice and reconciliation in Darfur. The role and positions of the regional organizations, especially the African Union and the League of Arab States, as well as the Organization of Islamic Cooperation, should

be taken into account in our pursuit of justice in the Darfur region.

Pakistan expresses concern at violations of international human rights law and international humanitarian law in the Darfur region. It is the obligation of all States to guarantee and protect the right to life of all their citizens. It is also the primary responsibility of the Government of the Sudan, which must take all necessary measures to investigate human rights violations in Darfur and bring perpetrators to justice.

At the same time, the actions of all parties in Darfur need to be scrutinized and investigated. The destabilizing activities of the Darfuri armed rebel movements and attacks against civilians and humanitarian workers should be strongly condemned and thoroughly investigated. The perpetrators of such attacks should be brought to justice. Sanctions should be imposed against all armed movements that continue to obstruct the peace process in Darfur and against those involved in the violations of international humanitarian and human rights law.

I conclude by reiterating that the overall objective of the international community and the Council is the attainment of durable peace, stability and justice in the Sudan. We should harmonize and consolidate our efforts for the early achievement of that objective.

Mr. Parham (United Kingdom): I offer many thanks to the Prosecutor of the International Criminal Court (ICC) for her report and her briefing. She has set out clearly the action that the International Criminal Court has taken over the past six months on Darfur and the areas on which the Court will focus in the coming months.

But regrettably, the past six months have not seen much progress in Darfur. The implementation of the Doha Document for Peace in Darfur is significantly behind schedule, despite the timetable having been extended by a year, in July. The Government of the Sudan has failed to deliver its funding commitments to the Darfur Regional Authority. As a result, the Authority lacks both the human and financial resources required to deliver the change so desperately needed by the people of Darfur. There has not even been much progress on the non-financial commitments. There is little evidence that the Special Court for Darfur is operating or that its Prosecutor is filing cases, for example.

The recent announcement that a splinter group of the Justice and Equality Movement led by Mohammad Bashar will begin negotiations with the Government in Doha this month is cause for cautious optimism. We will continue to urge those other movements that have not signed the Doha Document to engage constructively in the peace process. And we hope that all Darfuris will be given the opportunity to engage in an internal dialogue, without fear of reprisal.

The lack of political progress is compounded by the deterioration in the security situation in Darfur, in Northern Darfur in particular. International human rights and humanitarian law continue to be violated. Attacks in Sigili saw civilians suffering once again, as fighting between Government forces and the armed movements continued. The reported massacre in Hashaba in September is of extreme concern, with about 70 civilians reported dead following armed militia activity and aerial bombardments.

The African Union-United Nations Hybrid Operation in Darfur (UNAMID) also continues to come under attack. Six peacekeepers have been killed in the past six months. None of the perpetrators of the attacks has been brought to justice. This is an outrage and must be condemned.

It is unacceptable that UNAMID continues to be prevented from gaining access to investigate such attacks. We have also seen restrictions on the access of humanitarian agencies, the United Nations panel of experts and the United Nations independent expert on human rights. That, too, is unacceptable. The Government and armed movements must stop preventing access by humanitarian agencies to those most in need of assistance and must allow full access to Darfur for those mandated by the Council.

Given those ongoing and deeply troubling issues, the continuing jurisdiction of the International Criminal Court in Darfur is all the more relevant, and the Prosecutor's continued efforts to monitor and investigate allegations are vital. Attempts to argue that this Council did not have the right and power to refer the situation in Darfur to the jurisdiction of the ICC are entirely specious.

We welcome the progress in the trial of Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus. It is unacceptable, however, that the Government of the Sudan continues to obstruct the pursuit of justice for the people of Darfur and has failed

to take action to enforce the four outstanding arrest warrants. The Government of the Sudan is bound to comply with the obligation laid down by this Council in its resolution 1593 (2005) to cooperate fully with the ICC and its investigations. The United Kingdom has repeatedly urged the Government of the Sudan to comply with that obligation, and we repeat that call today.

Indeed, we call on all States, whether States parties to the Rome Statute or not, to assist and cooperate with the ICC to end impunity. The Council, which referred the situation in Darfur to the ICC, should consider what it can do to assist the ICC.

In conclusion, we want once again to thank Ms. Bensouda, not just for her briefing today, but for the continuing work of the Office of the Prosecutor. We will continue to work together to achieve justice for the victims of that conflict.

Mr. Menan (Togo) (*spoke in French*): At the outset, let me thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), for the presentation of the sixteenth report of the Office of the Prosecutor, in accordance with resolution 1593 (2005). The report has informed the Council about the ongoing judicial activities, as well as forecasts. It also addresses cooperation with States and investigations undertaken by the Court in the fight against impunity with respect to the situation in Darfur. It also gives us the opportunity to make several observations, although Togo is not a party to the Rome Statute of the ICC.

With respect to security, the situation in Darfur during the period under review remained fragile. Little genuine progress was made in implementing the Doha Document for Peace in Darfur. It is the same with regard to implementation of resolution 1593 (2005). It is clear from that state of affairs that no sufficient progress has been made on any of the issues since the last briefing by the former Prosecutor of the ICC in June (see S/PV.6778).

In terms of judicial activities, we understand that there has been no decision to date concerning opening new cases and that most of the recent judicial activities relate essentially to the *Banda and Jerbo* case. We welcome the holding of the status conferences planned for in that case and hope that the conferences will make it possible to iron out the differences among the parties so as to resolve the difficulties that can compromise the proper functioning of the trial, including setting

the opening date. We also recall that the fight against impunity presupposes the guarantee of a fair trial, which would ensure that each decision is beyond reproach.

With respect to cooperation with the ICC, we regret that, despite the principle of complementarity, which requires that the perpetrators of crimes committed in Darfur be prosecuted and tried, there has been no progress in the work of the successive special prosecutors who have been appointed at the national level. This has given impunity to those persons suspected of having committed those acts.

In addition, it has been reported that the four persons subject to five arrest warrants issued separately by the ICC have still not been arrested. In this regard, Togo encourages the various bodies of the ICC and the Assembly of States Parties to the Rome Statute to take any and all initiatives to identify the true root causes of this lack of cooperation in order to consider appropriate remedies to it. We express our firm desire that the request contained in the relevant resolutions of the Council and the appeals of other institutions, including the African Union High-level Implementation Panel, to take measures at the national level to ensure justice and cooperate with the ICC should be followed up by action on the part of the Sudanese authorities.

In respect of the investigative activities under way, my country endorses the many calls for an end to the violence and violations of human rights and international humanitarian law. We encourage the Office of the Prosecutor to continue to monitor the ongoing crimes being committed in Darfur, in particular aerial bombardments and indiscriminate ground attacks against civilians, including women and children, even in camps for displaced persons.

The Office of the Prosecutor should also closely monitor the widespread sexual and gender-based violence; attacks against human rights workers, members of civil society and heads of communities; the recruitment of child soldiers; and intentional acts aimed at achieving the total or partial disappearance of groups. Ongoing monitoring of the situation in Darfur is a way to ensure deterrence and prevent impunity.

In addition, Togo expresses its serious concern with respect to the attacks on and abductions of humanitarian workers and members of United Nations peacekeeping forces, which have to date led to the deaths of 43 soldiers of the African Union-United Nations Hybrid Operation in Darfur.

My country welcomes the announcement by the Prosecutor's Office of the start of prosecutions with respect to the killing of peacekeepers at the Haskanita base in 2007, particularly since Togo also lost police officers in Darfur. We hope that these investigations will, in this case, make it possible to shed light on the circumstances of these attacks and identify the perpetrators at all levels of responsibility so that they can be held accountable for their acts. We also urge the Office of the Prosecutor to work to advance the investigations and to prosecute those who recruit child soldiers and who are responsible for intentionally subjecting groups to living conditions that lead to their total or partial disappearance.

A lasting solution to the conflict in Darfur will entail a negotiated agreement and the fight against impunity through the prosecution, arrest and punishment of persons involved in committing crimes. In this regard, we believe that the political will of the most senior Sudanese authorities to put an end to impunity continues to be the key to a lasting settlement to the conflict in Darfur. From this standpoint, the Government and the groups that are non-signatories of the Doha Document for Peace in Darfur must immediately put an end to the hostilities and undertake discussions without preconditions in order to achieve a peaceful settlement of the conflict and ensure genuine reconciliation.

Mr. Tladi (South Africa): I would like to thank the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, for her progress report and for all the efforts she and her Office have made in the fight against impunity.

South Africa is a State party to the Rome Statute, and as such, we are committed to all the objectives of the Statute. The values underpinning the Statute include the belief that the most serious crimes of concern to mankind must not go unpunished, and the pursuit of peace, security and the well-being of the world. These are the dual objectives of the Rome Statute, and both must be pursued with equal vigour.

Our support for the work of the Prosecutor and the ICC in Darfur is based on the conviction that those who have committed serious crimes against the men, women and children of the Sudan must be held accountable, whether through the ICC or national systems, in accordance with the principle of complementarity. As we have also said in the past, however, those who are directly affected by the conflict in Darfur will take

little comfort in the discussions here today, held in very comfortable conditions, if we do not take all practical measures to end the conflict.

In this regard, we note with concern that the Secretary-General's report in October (S/2012/771) signalled that the situation in Darfur had deteriorated. While mindful of the need for the Council to continue addressing wider Sudan-related issues, it is important for the Council not to neglect the situation in Darfur. It is only when the international community acts with conviction and in concert, using all available means, that efforts exerted by different players will reap benefits for the victims of atrocities.

We wish, in this regard, to stress our continued support for the Doha Document for Peace in Darfur. We also call for the implementation of the recommendations of the African Union (AU) High-level Panel on Darfur and express our unwavering support for the AU High-level Implementation Panel for the Sudan. We welcome in this regard the Prosecutor's intention to make the recommendations of the AU High-level Panel one of the main areas of attention as she interacts with the Chair of the High-level Implementation Panel and the Chair of the African Union.

Even with all of these processes, we note that, ultimately, the primary responsibility for the maintenance of international peace and security, including in our sisterly State of the Sudan, rests with the Security Council. We believe that Council support of AU processes would advance long-term peace and justice in the Sudan.

We have taken note of the developments with respect to the *Banda and Jerbo* case in the ICC, and we look forward to a decision on the start of the trial, subject of course to the Trial Chamber's decision on the defence's leave to appeal.

South Africa is concerned about the allegations of continuing violence in Darfur, including acts of aerial bombardment that indiscriminately target civilians, ground attacks and the recruitment and use of child soldiers. We wish at this point to also express our concern at reports of the rise in the number of new militia in the north and west of Darfur, brandishing new weapons. It is further disconcerting that the violence has resulted in the deaths of several peacekeepers and that the perpetrators of the violence show no respect for the peacekeepers of the African Union-United Nations Hybrid Operation in Darfur. We are particularly

concerned about the allegations of widespread sexual and gender-based violence targeting those most vulnerable. If the information contained in the report is found to be true, those found to have committed such acts should be held accountable, and we urge full cooperation into the investigation of these atrocities.

All the alleged acts of continuing violence are also a sobering reminder that the institution of criminal proceedings will not, on its own, help to protect those who bear the brunt of the political conflict in Darfur. The Council should therefore use all the tools in its repertoire, including supporting AU processes, to definitively address the conflict in Darfur.

We have taken note of the Prosecutor's call for the Security Council to ensure the Sudan's compliance with resolution 1593 (2005). While we understand the Prosecutor's frustration at the lack of arrests of individuals with outstanding arrest warrants, we would point out that the problem of impunity in situations referred to the ICC by the Security Council goes much deeper and is more systemic than just non-cooperation by individual countries.

Over the past few months, there have been several meetings, official and unofficial, in which the relationship between the Council and the ICC has been examined. The constant and consistent refrain in all of those meetings has been that the Court is caught in the crossfire of the political dynamics of the Security Council. That is reflected in the skewed manner in which the referral resolutions themselves are drafted. With respect to cooperation, for example, some members of the Council — those that have the greatest influence on the referral resolutions — have reserved for themselves the right not to cooperate with the Court, which raises serious questions about credibility of the process.

In order to enable the ICC to execute its mandate, the Council should insist on full cooperation with the Court by all States Members of the United Nations, including permanent members of the Council, in situations that it refers to the Court. Until that question and other related questions are resolved, securing cooperation may continue to be an uphill battle. We are convinced that the Prosecutor's call for full cooperation, which South Africa fully supports, will ultimately be realized only when the Council stops seeing referrals as an end in themselves.

Mr. Briens (France) (*spoke in French*): I thank Prosecutor Bensouda her briefing. Since 2005, the

Office of the Prosecutor has reported to the Security Council in a transparent manner on the work of investigation and the proceedings carried out by the International Criminal Court (ICC), and we are grateful for that.

Nearly eight years after the Council referred the question at hand to the Court, the results are mixed. The Office of the Prosecutor and the judges of the Court have implemented their mandate. Preliminary analyses of crimes have been carried out, investigations have been undertaken, five arrest warrants against four individuals have been issued, and judicial proceedings against rebels who voluntarily gave themselves up have commenced. The first trial is about to open against two rebel leaders, Mr. Abdallah Banda and Mr. Saleh Jerbo, for the attacks on peacekeeping troops in Haskanita. It cannot be denied that the Court's action has had an impact — criminals hesitate to perpetrate the massive attacks that was their hallmark in 2003.

But there is also a darker side, of which the Prosecutor reminded us this morning. First of all, four individuals accused of war crimes and crimes against humanity — one of whom is also accused of genocide — continue to evade the Court overtly and blatantly, despite the arrest warrants issued for them by the International Criminal Court. These are the Sudanese President Mr. Al-Bashir, the former militia leader Mr. Ali Kushayb, the Defence Minister Mr. Mohammed Hussein, and the present Governor of Southern Kordofan, Mr. Ahmed Haroun, are at liberty.

Secondly, those four individuals — who are being prosecuted, let us remember, for the massacre and displacement of thousands of civilians, and are accused of having perpetrated genocide by methods that they hoped were invisible, such as rape, persecution, and the intentional blocking of access to aid — are still in key positions and able to order further atrocities. As illustrated by current affairs before the Council, impunity is encouraging them to use the same methods in Southern Kordofan.

Thirdly, despite the Sudanese Government's deceitful efforts, reports confirm air strikes, the failure to disarm the Janjaweed militias, arbitrary arrests, sexual violence and obstruction to humanitarian aid.

Finally, in contrast with the announcements made by the Sudanese authorities and the multiplication of the Sudanese special courts supposedly set up to prosecute the perpetrators of serious crimes committed in Darfur,

no legal proceedings have been undertaken. Unlike Libya, which undertook to prosecute those accused by the ICC pursuant to the complementarity provisions of the Rome Statute, the Sudan has not taken the slightest measure to try the four accused.

The Office of the Prosecutor President Mbeki's High-Level Implementation Panel have scrutinized the work of all the special courts established since 2005 in the Sudan. They have done nothing, and they can do nothing since all the perpetrators of crimes are enjoying total immunity. As Ms. Bensouda reminded us, the Panel of the African Union made the same finding.

All of the foregoing elements flout resolution 1593 (2005) and other Council resolutions on the Sudan, the most recent of which being resolution 2063 (2012) of 31 July. The Sudan's obligation to cooperate pursuant to those resolutions is not being respected.

I would also point out that the implementation of the peace process is riddled with failings. Reconstruction is stymied and the return of internally displaced persons and refugees has still not taken place, while the resurgence of fighting is increasing insecurity. Resources transferred to the Darfur Regional Authority are still too few. In those conditions, people are not seeing any of the improvements that alone would win their support for the peace plan.

There will be no lasting peace in Darfur and in the Sudan as a whole if we leave crimes against civilians unpunished. Experience has proven that. In Blue Nile and Southern Kordofan states, the crimes that were committed in Darfur are being replicated — the same crimes, the same organization and the same victims, civilians. The Office of the Prosecutor has drawn its conclusions and has asked the Council to think afresh and consider new legal or operational measures to ensure the implementation of its resolutions.

Our Council must be consistent. The Secretariat and the States parties to the Rome Statute must also do so. First, contacts with fugitives from justice are unacceptable. They cannot be considered interlocutors and should not set foot in the territory of a non-party State without being arrested. Secondly, we must respond to the letters from the Court addressed to us through the Secretary-General on non-cooperation issues. Thirdly, we could certainly resume our consideration of the listing of individuals concerned by the Sanctions Committee. That was raised repeatedly in the debate

of 17 October last under the presidency of Guatemala (see S/PV.6849).

I would remind the Council that paragraph 3 of resolution 1591 (2005) explicitly states that those violating international humanitarian law or international human rights law shall be subject to sanctions. All those measures have a final goal — the arrest and transfer to The Hague of the accused pursuant to resolution 1593 (2005), which, let us remember, is mandatory for all.

Mr. Cabral (Portugal): At the outset, I wish to welcome the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda, to the Council today and thank her for her report on the situation in Darfur, pursuant to resolution 1593 (2005). The cases of genocide, crimes against humanity and war crimes taken up by the Court provide examples of the worst incidents that have taken place in Darfur. Reports, such as the one presented to us today by the ICC Prosecutor, give the Council the opportunity to regularly assess the progress made by the Court in fighting impunity, as well as the obstacles and difficulties it has encountered. It is also an opportunity to look into recent developments on the ground in terms of observing persistent patterns of violence that may fall under the category of the aforementioned grave crimes.

Unfortunately, many of the concerns expressed by the Council at the end of July persist today. Continuing violence, attacks on civilians, peacekeepers and humanitarian personnel; obstacles to the activities of humanitarian organizations and to humanitarian access in Darfur; as well as the continuing lack of cooperation of the Government of the Sudan with the Court, all stressed by resolution 2063 (2012), are again central aspects of today's report of the Prosecutor. Indeed, we continue to see with real concern that arrest warrants issued by the Court have still not been executed, and that the Sudanese authorities continue not to cooperate with the Court in that regard. We take note, however, of the developments in the *Banda and Jerbo* case reported by the Prosecutor; although it is proceeding at a slow pace, we welcome its progress towards the trial phase.

But the most troubling aspect is the reiterated reporting by the Prosecutor on the continuation of aerial bombardments targeting civilians and the persistence of ground attacks targeting civilians perpetrated by both Government and rebel forces in populated areas and camps of internally displaced persons. As the Prosecutor refers, such attacks may constitute further

war crimes or crimes against humanity under the Rome Statute.

Moreover, we reiterate our concern about the continuing sexual violence perpetrated in Darfur. We are troubled by the reported persecution and intimidation of victims and of those who try to defend them in an effort to silence that criminal behavior. In the same vein, we are gravely troubled by the attacks against civil society and human rights defenders, as well by the increasing number of attacks on humanitarian aid workers and United Nations personnel. We also reiterate the concerns expressed by the Council and shared by the Prosecutor regarding the obstacles placed by the Sudanese authorities on the ability of the African Union-United Nations Hybrid Operation in Darfur to fully implement its mandate, by deliberately delaying visas or blocking other United Nations aid activities on the ground. Such obstacles may seriously impact the living conditions of many civilians.

We encourage the Office of the Prosecutor to continue closely monitoring those and other incidents that may fall under the Court's purview, in accordance with its mandate under resolution 1593 (2005).

By virtue of its judicial independence, the ICC remains unique as a conflict prevention tool that can ensure both justice and peace in the region. To that end, the international community, on behalf of which the Security Council referred the case to the ICC, has a strong interest in ensuring that the Court fully play its role. Cooperation is therefore essential. Without the cooperation of all Member States the Court cannot fulfil its function.

We are concerned, however, by the continuous lack of cooperation displayed by the Sudanese authorities regarding the outstanding arrest warrants. We again stress the need for all States to strengthen cooperation with the Court to enforce them.

Finally, we would like to thank Prosecutor Bensouda for her efforts and contribution during her initial months as head of the Prosecution Office to strengthen the Court and the role it may play in the maintenance of peace and security.

Mr. Kumar (India): Let me begin by thanking the Prosecutor, Ms. Fatou Bensouda, for her briefing today. We have also taken note of her report on the situation in the Sudan, submitted pursuant to paragraph 8 of resolution 1593 (2005).

The continuing conflict in Darfur is cause for serious concern. We support all efforts to bring that conflict to an end. We also support the activities of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) aimed protecting civilians, in cooperation with the African Union's High-level Implementation Panel led by President Thabo Mbeki to restore an enduring environment of peace and stability in Darfur. An inclusive political process to address the legitimate aspirations of all sectors of the Darfuri population will go a long way in resolving the conflict.

Despite ongoing hostilities in some parts, the overall humanitarian situation in Darfur has improved since the signing of the Doha Document for Peace in Darfur. The efforts of UNAMID, in cooperation with the Sudanese Government and other partners, have also contributed to the restoration of peace and security in several areas and have facilitated the return of thousands of displaced persons. What is needed now is for the international community to support those efforts and to make adequate resources available to the new institutions created under the Doha Document for Peace in Darfur so that they can become fully operational and address the political, socioeconomic and social needs of the Darfuri population.

In that connection, we call upon all parties to recognize that there is no military solution to the conflict in Darfur. The Security Council should consider targeted measures against those groups and movements that have refused to join the political process and that continue to pursue a military approach. The Security Council must ensure that all such groups join the political process without preconditions and without further delay. It is also important for the proceedings in the International Criminal Court to be undertaken in a manner consistent with its obligations and to assist efforts aimed at ending the conflict in Darfur.

India is not a signatory to the Rome Statute and is not a member of the International Criminal Court (ICC), for reasons that are well known. I need not reiterate them. India strongly condemns all acts of violence committed against civilians. We believe that the right to life is one of the fundamental rights and that it is the foundation of any social order. It is the obligation of all States to take appropriate measures to protect the life of their citizens while maintaining social order. The States concerned must also bring to justice those responsible for violations of that right. At the same time, the ICC should not make any suggestion that

has the effect of creating new obligations for States and regional organizations that are not parties to the Rome Statute. Such suggestions will not serve the purpose of peace in Darfur, nor will they be legally sound. For those reasons, we cannot support such suggestions.

In conclusion, India will continue to support all diplomatic efforts for the early establishment of peace and security in Darfur that will afford all sections of the Darfuri population opportunities for socioeconomic development and peaceful coexistence through an inclusive political process.

Mr. Alzate (Colombia) (*spoke in Spanish*): I would like, at the outset, to welcome to the Security Council Chamber the Prosecutor of the International Criminal Court (ICC), Ms. Fatou Bensouda. We have read with interest the Prosecutor's sixteenth report on the situation in Darfur, and are dismayed by the fact that, with the exception of those accused in the *Banda and Jerbo* case, the criminal trials initiated by the Prosecutor at the express request of the Council have not yet gone forward because the accused have not yet been brought before the Court.

The Prosecutor concluded that credible criminal procedures did not exist in the Sudan such that they could impugn the admissibility of the open cases that have been brought or otherwise cast doubt on the Court's jurisdiction in their regard. That was the situation in June, when the fifteenth report was presented, and it still holds today, since there has been no real progress in the matter.

In fact, most of the report does not refer to the four open cases, but rather to ongoing investigations into alleged crimes that are being committed in Darfur, which could lead to the opening of new criminal cases. That would apply to alleged indiscriminate aerial bombardments and land attacks against civilians, alleged acts of gender-based and sexual violence, alleged crimes against human rights activists and members of civil society, alleged kidnappings and attacks on aid workers and United Nations personnel, alleged recruitment of minors and alleged interference with the delivery of humanitarian aid.

Such facts are cause for concern, and the Council, along with the ICC, should take up the allegations at the appropriate time. However, that catalogue of grave incidents and alleged violations and abuses should not let us lose sight of the undeniable fact that for now the primary focus of the Council's attention and that of the

international community should be on carrying out the arrest orders issued by the Court, which would in effect fulfil the implementation of resolution 1593 (2005) and the obligations therein.

One of the stated aims of the Rome Statute and of the establishment of the ICC was to deter the likely perpetrators of horrendous crimes in the context of generalized violence or armed conflict by sending them the message that atrocities that once shook the conscience of humankind, such as ethnic cleansing and genocide, would not go unpunished, and that the United Nations and its States Members would spare no efforts to bring those responsible for such crimes to justice.

In that context, it is regrettable to see that in a year when we celebrated the first decade of the International Criminal Court, international criminal justice has not been able to function fully in Darfur. In paragraph 2 of its historic resolution 1593 (2005), the Security Council decided explicitly "that the Government of Sudan and all other parties to the conflict in Darfur shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution". In my delegation's opinion, the obligation to cooperate with the Court definitely includes the duty to implement arrest warrants issued by the Prosecutor.

Mr. Sun Xiaobo (China) (*spoke in Chinese*): I would like to thank Prosecutor Bensouda for her briefing.

The problems in Darfur are complex and closely intertwined, involving the political process, economic development, humanitarian assistance and the pursuit of justice, with the political process being the most critical. Justice, important as it is, can be secured only when durable peace and stability are achieved in Darfur by political means. The top priority for the political process is therefore for all sides to fully implement the Doha Document for Peace in Darfur so that the parties concerned can achieve a ceasefire and sign a peace agreement based on the Document, and any action by the international community, especially the Security Council, should be aimed at achieving that goal.

China's position with regard to the involvement of the International Criminal Court in Darfur remains unchanged. We hope that the Council will value and heed the views of regional organizations, including the African Union and the League of Arab States.

Mr. Wittig (Germany): I would like to join others in thanking the Prosecutor, Ms. Fatou Bensouda, for her report and her statement today. She has comprehensively

covered recent judicial activities, the alarming situation in Darfur and the persistent non-cooperation of the Government of the Sudan regarding the implementation of arrest warrants.

After the Prosecutor has reported to the Council for the 16th time following the Darfur referral, we have to note once again, with deep regret, that the four arrest warrants issued by the International Criminal Court (ICC) have not been executed. Ahmad Harun, indicted for war crimes and crimes against humanity, is still Governor of Southern Kordofan; Ali Kushayb, indicted for war crimes and crimes against humanity, remains at large in the Sudan; President Omer Hassan Al-Bashir, indicted for war crimes, crimes against humanity and genocide, continues to defy the authority of the Security Council; and Abdel Raheem Hussein, for whom an arrest warrant was issued in March, is still Minister of Defence.

As the Prosecutor's report states yet again, it is primarily the responsibility of the Government of the Sudan to comply with the Council's resolutions, cooperate with the Court and surrender indicted persons to the authority of the Court. Yet the Sudan still shows not the slightest willingness to do any of those things, and thereby continues to openly defy the Council's authority. The situation is extremely deplorable.

We must therefore not weaken in our determination to ensure that the four indictees will be held accountable. We take full note of the fact that the Prosecutor calls on the Security Council to ensure the Sudan's compliance with resolution 1593 (2005). Similarly, Germany reiterates its call to all States parties to the ICC to fully honour their obligations under the Rome Statute, in particular the obligation to cooperate and to execute any arrest warrant issued by the Court. In that regard, we fully support recent proposals aimed at ensuring the Council's more active and consistent involvement in cases of non-cooperation following the referral of a situation to the ICC. In the age of accountability, non-cooperation must be met with increased vigilance on the part of the Council.

We commend the Office of the Prosecutor for its continued monitoring of alleged acts of genocide and/or crimes against humanity in Darfur, and attacks on humanitarian aid workers and peacekeepers from the African Union-United Nations Hybrid Operation in Darfur (UNAMID). In that regard, we are deeply concerned about reports of continued, indiscriminate aerial bombardments leading to the deaths of numerous

civilians, and the recent increase in violence in general, especially in North Darfur. We remain concerned about all forms of violence against civilians in Darfur, especially sexual and gender-based violence and violence against children, as well as reports of arbitrary arrests and detentions. In that regard, we would like to draw attention to the incidents that took place in Hashaba in late September. According to various sources, including United Nations reporting, the violence in Hashaba included aerial attacks resulting in the death of as many as 100 civilians. Furthermore, a UNAMID patrol tasked with investigating the incident was ambushed, and a South African peacekeeper died in the attack. We call for a thorough investigation of the attack on Hashaba, as well as of that on the peacekeepers. Those responsible must be brought to justice.

Germany's tenure as a non-permanent member of the Council will soon come to an end. It was during our membership that the Council for the first time took a unanimous decision to refer a situation to the ICC. It is our hope that it will show similar resolve in other situations where very serious international crimes are being committed. As a State party to the Rome Statute, Germany will continue its strong support for the ICC.

Mr. DeLaurentis (United States of America): I would like to thank the Prosecutor of the International Criminal Court (ICC), Ms. Bensouda, for her briefing today.

The United States remains deeply concerned about the mounting violence in Darfur and reports of deliberate targeting of civilian areas, including increased incidents of aerial bombardments, sexual and gender-based violence and other crimes. The shelling in late September of Hashaba, which killed at least 60 civilians, and the razing of the town of Sigili in early November by the Government of the Sudan-aligned Popular Defence Forces, are stark cases in point. Should the violence spread beyond North Darfur, threats to civilians will only multiply.

Growing attacks on civilians have gone hand in hand with more frequent and serious attempts to deny the African Union-United Nations Hybrid Operation in Darfur (UNAMID) freedom of access. In both Hashaba and Sigili the Government of the Sudan denied UNAMID access to the affected areas immediately after the attacks. Since UNAMID's initial deployment in December 2007, 43 peacekeepers have lost their lives, including six since the Prosecutor's last

report, in June. Attacks on UNAMID peacekeepers can be prosecuted as war crimes. The Government of the Sudan's deliberate obstruction of UNAMID, and failure to investigate unwarranted attacks on it, fosters a continued culture of impunity and is unacceptable. The Council should condemn any and all attacks on UNAMID personnel in the strongest possible terms.

Reversing the cycle of violence and impunity requires accountability for the perpetrators. The ICC's prosecution of the architects of the atrocities in Darfur is crucial in that regard. We note the Prosecutor's report about proceedings in the case against Abdallah Banda and Saleh Jerbo, as well as her Office's investigation and monitoring of ongoing crimes in Darfur. However, we are dismayed that the Government of the Sudan is still not cooperating with the ICC to execute the outstanding arrest warrants in the Darfur cases, despite its obligation under resolution 1593 (2005) to cooperate fully with the Court. The subjects of the warrants remain at large and continue to cross international borders. We continue to urge all States to refrain from providing political or financial support to those individuals, and we will work to prevent any such support.

Continued impunity for crimes committed in Darfur foments instability there and sends a dangerous message to the Government that there are no consequences for attacking civilians elsewhere. Attacks have increased in the two areas in recent months, particularly in the form of indiscriminate aerial bombardments. We strongly condemn those attacks.

We urge the Government of the Sudan to uphold its commitments to establish credible local justice and accountability mechanisms. The Government of the Sudan and the Darfur Regional Authority have repeatedly announced the establishment of investigative committees to determine responsibility for civilian deaths but have not followed through. So far, their announcements have been empty talk. Moreover, the Government-appointed Special Prosecutor for Darfur has not made one significant arrest or prosecution. The Government's refusal to take serious action in the matter is an abrogation of its commitments to the people of Darfur under the justice and reconciliation chapter of the Doha Document for Peace in Darfur.

We welcome the willingness of States to consider creative approaches and new tools to enable the ICC's work in Darfur, execute outstanding arrest warrants and ensure compliance by States with relevant international obligations. We would welcome further discussions

focused on ensuring the full implementation of Council resolutions with ICC referrals.

The United States appreciates Prosecutor Bensouda's report and looks forward to continuing a constructive dialogue with the ICC and the Security Council as we work together to end impunity for crimes in Darfur, bring perpetrators to justice and prevent future atrocities.

Mr. Mehdiyev (Azerbaijan): At the outset, I would like to thank Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, for her briefing and for presenting the sixteenth report of the Prosecutor to the Security Council pursuant to resolution 1593 (2005).

Azerbaijan is not party to the Rome Statute of the International Criminal Court. We know the efforts of the Court to investigate violations of international human rights and humanitarian law in Darfur. It is important to ensure that the Prosecutor of the International Criminal Court acts strictly within the mandate of resolution 1593 (2005).

It is clear that there is no military solution to the conflict in Darfur. We note some positive developments in the overall security environment in the region. We also take positive note of the signing of the memorandum of understanding between the Government of the Sudan and the Justice and Equality Movement faction to cease hostilities and launch peace talks. It is important that those groups that have not yet signed the Doha Document for Peace in Darfur join the peace process without preconditions.

At the same time, we reiterate our serious concern about the activities of non-State armed groups, which represent the main obstacle to the peace process. The reports of serious human rights violations committed by such groups against civilians, especially those settled in camps for internally displaced persons (IDPs), should be properly investigated, in order to bring those responsible to justice and to prevent those violations being repeated in the future.

We note with profound concern the increasing attacks on United Nations staff members and aid workers, including the looting of a World Food Programme location in the Otash IDP camp in July.

In conclusion, we stress the need for the international community to further support the implementation of the Doha Document, as well as the importance of the

renunciation of violence by the rebel groups, as a vital prerequisite for ensuring durable peace in Darfur.

Mr. Karev (Russian Federation) (*spoke in Russian*): We thank the Prosecutor of the International Criminal Court for the sixteenth report to the Security Council and for today's briefing.

The International Criminal Court is meant to make an important contribution to the effort to bring to justice perpetrators of the most serious crimes committed during the conflict in Darfur. Its efforts in that area complement the activities of national judicial institutions in the matter of fighting impunity.

The Court is called on to objectively assess unlawful actions by all parties involved in a situation. Its reputation, and consequently States' relations with it, depend on how effectively it is able to do that. In the context of Darfur, that means that a scrupulous and impartial investigation must be carried out both in cases involving Sudanese officials and those involving leaders of insurgent groups that have committed serious violations meriting the attention of the Court. We are pleased with the balanced approach of the Prosecutor in that regard.

In the seven years since the Council adopted resolution 1593 (2005), the International Criminal Court has achieved clear results in investigations of Sudanese cases. In some cases it has reached the stage when further proceedings are not possible without the accused appearing personally in The Hague. That situation requires that thought be given to the Court's next steps and that new approaches to the issue of fighting impunity be explored. In that context, we note the importance of the implementation by States of their relevant obligations regarding cooperation with the Court, while complying with the norms of international law in the matter of the immunity of senior State officials.

We welcome the Prosecutor's steps to bring to justice persons who committed the attacks against African Union peacekeepers in Haskanita in 2007. Considerable work has been put into the case of the insurgent leaders Banda and Jerbo. It is important not to lose momentum in those cases and to avoid them going on too long for reasons that are not objective. We trust that in administering justice in matters relating to Darfur, the Court will continue to work harmoniously with the process of post-conflict recovery.

Mr. Rosenthal (Guatemala) (*spoke in Spanish*): Our delegation thanks the Prosecutor of the International Criminal Court, Ms. Fatou Bensouda, for her briefing and for presenting the sixteenth report of the Prosecutor to the Security Council in accordance with resolution 1593 (2005).

As indicated in paragraph 2 of resolution 1593 (2005), the Government of the Sudan and all parties involved in the situation in Darfur must cooperate to assist the Court and its Prosecutor in their work. It is on that legally binding basis that investigations and judicial proceedings are carried out with regard to war crimes, crimes against humanity and genocide, in conformity to the Rome Statute of the International Criminal Court.

We note the report introduced by the Prosecutor, which brings us up to date on the ongoing activities and judicial proceedings being carried out by the Court, not just in the Trial Chamber but also in its investigative and monitoring activity of alleged crimes that have the characteristics of acts of genocide and crimes against humanity. Our delegation welcomes the actions undertaken by the Court in this area in order to combat the prevailing impunity in the region of Darfur.

Similarly, we note with extreme concern the alleged attacks committed against and targeting the civilian population, perpetrated both by Government officials and by rebel militia groups, in particular in internally displaced persons camps, where such attacks include murder, pillaging, rape and the destruction of property. Those acts are reprehensible in every possible way and should be investigated and documented, as they threaten the safety of the civilian population and, consequently, greatly affect the incipient peace process based on the Doha Document for Peace in Darfur. Moreover, the information provided to us about the constant restrictions confronting the distribution of humanitarian aid aimed at alleviating the suffering of the vulnerable population is unacceptable.

We are aware of the extraordinary sensitivity of the Government of the Sudan with regard to the carrying out of investigations and cooperating with the International Criminal Court. In our view, by analysing the current report and then hearing the statement of the Prosecutor and the Permanent Representative of the Sudan, it is obvious that there are still enormous gaps with regard to the lack of cooperation with the International Criminal Court by the Sudanese Government on the investigation of the cases over which the Court has competence.

We appeal to the Government of the Sudan and to the parties involved in the Court's judicial investigations to cooperate effectively and responsibly in order to ensure accountability for those crimes perpetrated since 2003 and the success of the judicial proceedings under way today.

Our delegation, as a State party to the International Criminal Court and consistent with our foreign policy and in compliance with international human rights instruments, cannot ignore the suffering of the population and the serious crimes perpetrated in Darfur since 2003 and the recent investigations revealing acts of genocide and crimes against humanity. We are aware of how complex it is to bring to justice those responsible, indicated again in the Prosecutor's report, for the crimes committed in Darfur. We believe that the evidence collected and the judicial investigations are in accordance with the principles of impartiality and independence.

Under our presidency in the month of October, we organized an open debate on strengthening cooperation between the Security Council and the International Criminal Court (see S/PV.6849). In that context, our delegation hopes that, from an institutional point of view, the existing cooperation will be renewed, combining the judicial and political aspects in order to maintain international peace and security. That, of course, does not mean politicizing the Court, nor does it mean judicializing the Council, but rather the combination of the two authorities, each one within its respective competency, to fulfil the respective mandates that they have in common — the prevention of conflict and the combating of impunity.

Lastly, we would like to reiterate to the Prosecutor of the International Criminal Court Guatemala's support and cooperation in carrying out her obligations. The challenges are alarming, given the deterioration of the situation in Darfur, which is compounded by the prevailing impunity.

The President (*spoke in Arabic*): I shall now make a statement in my national capacity as the representative of Morocco.

At the outset, I align myself with my colleagues who have welcomed Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, and I thank her for her detailed briefing. Since the adoption of resolution 1593 (2005), the International Criminal Court has regularly submitted reports to the Security Council on the

progress achieved in implementing that resolution. We have taken note of the sixteenth report, which included the recent developments and activities of the Court with regard to the Sudan since 5 June.

Morocco has always called for a political settlement between all relevant parties in order to alleviate the suffering of the civilian population. We reiterate our commitment to the principles of international humanitarian law, human rights and respect for the sovereignty and integrity of States. Morocco, at the time, welcomed the signing of the Doha Document for Peace in Darfur and the implementation of the Document's provisions with regard to the issues that had caused the conflict, especially the provisions on the fair redistribution of power, resources, restitution, the return of refugees, reconciliation and the continuation of national dialogue.

We realize that there are still many obstacles impeding the restoration of peace in Darfur. We regret that those challenges, including the refusal by some rebel groups to become involved in the peace efforts, continue to delay the effective implementation of the Doha Document for Peace in Darfur. The refusal by those groups to join the peace process in accordance with the Doha Document is now a major source of instability in the region, with some groups having openly declared their intention to replace the Government in Khartoum.

In that regard, we would like to underscore the following positive points. A joint declaration has been issued by the Government and the Interim Military Council of the Justice and Equality Movement (JEM), a new group that broke away from JEM. We hope that other groups will join them. We also underscore the positive efforts by the new Darfur Regional Authority to move advance efforts to implement the Doha agreement and, specifically, their commitment to promoting a comprehensive dialogue, despite all the obstacles.

We look forward to the upcoming donor conference in Doha and to the normalization of relations between the Sudan and South Sudan. We hope that that will provide the necessary funding to the Darfur Regional Authority to enable it to carry out all the tasks facing it.

With regard to the ICC indictment of President Al-Bashir, the League of Arab States stated its position on the matter a few days after the indictment was issued. Like other international organizations and groups, the League has reaffirmed that position on various occasions.

Stability cannot be restored to Darfur unless public relations are stable, the agreements signed by the two countries are signed, and the outstanding issues between them are resolved. We hope that this happens as soon as possible so that trust between the two neighbours can be established on the basis of good-neighbourliness, cooperation and complementarity, to the benefit of the peoples of both countries and in the interests of the stability and security of the entire region.

I now resume my functions as President of the Council.

There are no more names inscribed on the list of speakers. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 12.10 p.m.