



Sudan/Darfur

Expected Council Action

Members have been discussing a draft presidential statement on the issue of Sudan's cooperation with the International Criminal Court (ICC). It is unclear whether agreement will be reached. It is possible that Costa Rica, the draft's sponsor, may table it as a draft resolution.

Key Recent Developments

On 5 June, the ICC Chief Prosecutor, Luis Moreno-Ocampo, presented his regular briefing to the Council. Speaking on the issue of complementarity, he said that his office had found "no trace of Sudanese proceedings in relation to crimes in Darfur during the last three years. The Government itself has clarified that there were none." (Under the complementarity principle, which is contained in Article 17 of the ICC's Rome Statute, the Court cannot act if a case is being considered by domestic courts unless the country is unwilling or unable genuinely to investigate or prosecute.)

He informed the Council that the Sudanese government is not cooperating with the Court and is not complying with resolution 1593 (in which the Council decided that the Sudanese government and all other parties to the conflict shall cooperate with the Court and the Chief Prosecutor).

He also informed the Council that he would present a second case on Darfur to ICC judges in July. He noted that evidence gathered in recent investigations "shows an organized campaign by Sudanese officials to attack civilians, with the objective of physically and mentally destroying entire communities" and that "the commission of such crimes on such a scale, over a period of five years and throughout Darfur, has required the sustained mobilization of the entire Sudanese State apparatus."

He recommended that the Council adopt a presidential statement requesting that the government stop the crimes and arrest Ahmad Harun and Ali Kushayb, and that all parties assist the Court and comply with resolution 1593.

At the Council meeting (S/PV.5905), Costa Rican Foreign Minister Bruno Ugarte addressed the Council, expressing support for the Prosecutor's remarks. Recalling the failures in Bosnia and Rwanda, he exhorted the Council to "find a solution that adequately addresses the imperatives of both peace and justice. It certainly cannot continue", he said, "with what, as time passes, seems to be a policy of appeasement of Khartoum and of indifference to the atrocities that are occurring in Darfur. The Council must stop delaying and subordinating the imperatives of justice to political calculations".

Other members—including Belgium, Croatia, Panama, Italy, South Africa, France, the UK and the US—also expressed grave concern at the Prosecutor's findings and indicated strong support for Council action in that regard.

Still others, while expressing concern with the situation in Darfur, seem to have taken a more cautious approach. China, Russia, Indonesia and Viet Nam seemed to prefer a broader focus on a political process, improving cooperation between the ICC and Sudan, and upholding the principle of complementarity. Libya expressed similar concerns, including a perceived lack of attention to the actions of rebel movements, and warned about potential negative effects over cooperation from Sudan with the ICC and the UN-AU Mission in Darfur (UNAMID).

In early June, Costa Rica circulated a draft presidential statement that:

- recognised that ending impunity is an essential component of a solution in Darfur in all its aspects, i.e., political, security, humanitarian and judicial;
- recalled resolution 1593;
- encouraged the Court to support international cooperation with domestic efforts to uphold the rule of law;
- recalled the existence of pending arrest warrants against indictees Ali Kushayb and Ahmad Haroun; and
- called on Sudan to comply with resolution 1593 by arresting and surrendering both individuals to the ICC.

Discussions on the draft revealed differences of view within the Council on the subject, with opposition from Libya, China and Russia in particular.

A new version of the draft was recently circulated in an attempt to bridge the gaps and reach the necessary consensus for the adoption of a presidential statement. The new text contains more low-key language and is closer to a text discussed in the Council in December 2007, after the last briefing by Moreno-Ocampo. (At that time, it appears that agreement proved difficult to reach on a written text and the president of the Council therefore spoke to the media on 7 December outlining the essence of the elements on which there was substantial agreement in the Council.)

The new text now proposed by Costa Rica:

- takes note of Moreno-Ocampo's recent briefing;
- recalls resolution 1593, bearing in mind the complementarity principle;

- takes note of Moreno-Ocampo's efforts to bring perpetrators to justice, the ICC's transmittal of the two arrest warrants to the Sudanese government and the new investigations; and
- urges the Sudanese government and other parties to cooperate with the Court as required by resolution 1593, including in respect to Haroun and Kushayb.

Council Dynamics

The Costa Rican initiative received strong support from a majority of members, in particular those who are also states-parties to the ICC's Rome Statute (Belgium, Croatia, France, Italy, South Africa and the UK), and some support as well as from the US. There is a wide concern about justice and accountability issues and the need to preserve the Council's credibility in the light of Sudan's defiance of its obligations under resolution 1593. Burkina Faso, also a state-party, while initially cautious about the draft, appears to support it.

Libya, China and Russia seem opposed to the initiative. They apparently raised traditional concerns about the subject—including possible impact on the political reconciliation process and the need to defer to the Sudanese judiciary. They clearly seem to prefer a more cautious approach. They have also apparently expressed a preference for leaving the issue until after the return of the Security Council visiting mission on 10 June, or the briefing of UN Special Envoy Jan Eliasson, currently scheduled for 24 June.

Other members seem to fear that this is a delaying tactic and seem to be now considering other possibilities, including converting the draft into a resolution, if no consensus is reached. (Presidential statements are adopted by consensus. Resolutions require a minimum of nine affirmative votes, including those of the five permanent members.)

In general, Council members welcome Costa Rica's leadership on the issue and appreciate its efforts to overcome the challenges with reaching compromise in the Council on the issue. But some now seem concerned that any further compromises will excessively weaken the text.

UN Documents

Selected Security Council Resolutions
<ul style="list-style-type: none"> • S/RES/1769 (31 July 2007) established UNAMID. • S/RES/1672 (25 April 2006), 1591 (29 March 2005) and 1556 (30 July 2004) imposed sanctions. • S/RES/1593 (31 March 2005) referred the situation in Darfur to the ICC. • S/RES/1590 (24 March 2005) established UNMIS.
Most Recent Presidential Statement
<ul style="list-style-type: none"> • S/PRST/2008/15 (13 May 2008)
Latest Secretary-General's Reports
<ul style="list-style-type: none"> • S/2008/304 (9 May 2008) was the latest UNAMID report. • S/2008/267 (22 April 2008) was the latest UNMIS report.

Other

- S/PV. 5905 (5 June 2008) was the recent briefing by Moreno-Ocampo.
- S/PV.5892 (14 May 2008) was the most recent Secretariat briefing on Darfur.
- A/HRC/7/22 (3 March 2008) was the most recent Sudan human rights report to the Human Rights Council.
- S/2007/584 (2 October 2007) was the latest Panel of Experts' report.

Other Relevant Facts**UNAMID: Joint AU-UN Special Representative for Darfur**

Rodolphe Adada (Republic of Congo)

UN and AU Special Envoys

UN: Jan Eliasson (Sweden)

AU: Salim A. Salim (Tanzania)

UNAMID: Size, Composition and Cost

- Maximum authorised strength: up to 19,555 military, 3,772 police and 19 formed police units
- Strength as of 30 April 2008: 7,393 troops, 128 observers, 1,716 police
- Main troop contributors: Nigeria, Rwanda, South Africa and Senegal
- Cost: 1 July 2007 - 30 June 2008: \$1.28 billion

UNAMID: Duration

31 July 2007 to present; mandate expires 31 July 2008

UNMIS: Special Representative of the Secretary-General

Ashraf Qazi (Pakistan)

UNMIS: Size, Composition and Cost

- Maximum authorised strength: up to 10,000 military and 715 police personnel
- Strength as of 30 April 2008: 8,721 troops, 586 observers, and 631 police
- Main troop contributors: India, Pakistan and Bangladesh
- Cost: 1 July 2007-30 June 2008: \$846.28 million

UNMIS: Duration

24 March 2005 to present; mandate expires 30 April 2009