



# Security Council

Sixty-eighth year

*Provisional*

## 7060<sup>th</sup> meeting

Friday, 15 November 2013, 10 a.m.

New York

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<i>President:</i>	Mr. Liu Jieyi . . . . .	(China)
<i>Members:</i>	Argentina . . . . .	Mrs. Perceval
	Australia . . . . .	Mr. Quinlan
	Azerbaijan . . . . .	Mr. Mehdiyev
	France . . . . .	Mr. Araud
	Guatemala . . . . .	Mr. Rosenthal
	Luxembourg . . . . .	Ms. Lucas
	Morocco . . . . .	Mr. Laasel
	Pakistan . . . . .	Mr. Masood Khan
	Republic of Korea . . . . .	Mr. Oh Joon
	Russian Federation. . . . .	Mr. Churkin
	Rwanda . . . . .	Mr. Gasana
	Togo. . . . .	Mr. Menan
	United Kingdom of Great Britain and Northern Ireland . . . .	Sir Mark Lyall Grant
	United States of America. . . . .	Ms. Power

## Agenda

### Peace and security in Africa

Identical letters dated 21 October 2013 from the Permanent Representative of Kenya to the United Nations addressed to the Secretary-General and the President of the Security Council (S/2013/624)

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

### **Adoption of the agenda**

*The agenda was adopted.*

### **Peace and security in Africa**

#### **Identical letters dated 21 October 2013 from the Permanent Representative of Kenya to the United Nations addressed to the Secretary-General and the President of the Security Council (S/2013/624)**

**The President** (*spoke in Chinese*): In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representatives of Burundi, Gabon, Ghana, Ethiopia, Kenya, Mauritania, Mauritius, Namibia, Senegal and Uganda to participate in this meeting.

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

Members of the Council have before them document S/2013/660, which contains the text of a draft resolution submitted by Azerbaijan, Burundi, Ethiopia, Gabon, Ghana, Kenya, Mauritania, Mauritius, Morocco, Namibia, Rwanda, Senegal, Togo and Uganda.

I wish to draw the attention of members to document S/2013/624, which contains identical letters dated 21 October 2013 from the Permanent Representative of Kenya to the United Nations, addressed to the Secretary-General and the President of the Security Council.

It is my understanding that the Council is ready to proceed to the vote on the draft resolution before it. I shall put the draft resolution to the vote now.

*A vote was taken by show of hands.*

#### *In favour:*

Azerbaijan, China, Morocco, Pakistan, Russian Federation, Rwanda, Togo

#### *Against:*

None

#### *Abstaining:*

Argentina, Australia, France, Guatemala, Luxembourg, Republic of Korea, United Kingdom of Great Britain and Northern Ireland, United States of America

**The President** (*spoke in Chinese*): There were 7 votes in favour, none against and 8 abstentions. The draft resolution has not been adopted, having failed to obtain the required number of votes.

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

**Mr. Rosenthal** (Guatemala) (*spoke in Spanish*): The voting that was just concluded fills us with desolation, and I would like to explain our abstention, which in and of itself is a source of great sadness for us.

There were a number of reasons for it. First, our delegation has dedicated both time and effort in order to promote more constructive interaction between the International Criminal Court and the Security Council. We had believed that both bodies were multilateral — one legal, the other political — united by their mission to prevent conflict, fight impunity and demand accountability for perpetrators of mass atrocities. The draft text that was put to the vote today does not contribute to such constructive interaction. Instead, it erects a barrier of distrust between the two bodies that is harmful to both and to the community of nations in general.

Secondly, the submission by some countries of a draft resolution for the Council's consideration in the full knowledge that it would not be adopted runs counter to our vocation to promote consensus and unity within the Council. In this instance, the contrary was achieved. The vote put on display a divided Council when there was neither justification nor need to do so.

Thirdly, and for that very reason, this morning's exercise has the singular attribute of creating nothing but losers. No country or group of countries has benefitted; all of us have lost something. In our view, the voting was detrimental to the African Union, which has seen its proposal rejected; to the International Criminal Court, whose aspiration to universal membership is under assault; and to the Security Council, which, as I said, finds itself divided. We were all adversely affected.

Fourthly, the considerable progress recently achieved in building a truly fruitful partnership between the Security Council and the African Union has been compromised, without any of the parties having sought such an outcome. The damage may not be irreversible, but there has clearly been a misunderstanding, and

neither side was able to reverse the regrettable outcome, which was foreseeable to all.

Fifthly and perhaps most importantly, achieving peace and security, on the one hand, and justice, on the other, frequently raises dilemmas in the short term. We can all agree that these concepts go hand in hand to the extent that, if there is to be peace, justice is needed, and justice can be attained only in situations of peace. But sometimes we sacrifice justice to achieve peace, and the threshold of how to resolve this dilemma is different in each of our countries. We understand the reasons being put forth with the best of intentions by those countries that have invoked article 16 of the Rome Statute for the situation that is the object of the draft resolution, and we trust that those countries will also understand why some of us do not share their reasoning.

That brings me to my last point. It has been insinuated that failure to vote in favour of the draft resolution is somehow an expression of ill will towards the African Union and its member States. My delegation most categorically rejects such a suggestion. From our national vantage point, we frankly find it offensive, given our long and proven solidarity with all brotherly developing countries in multiple forums and numerous cases, as well as our deployment in some African countries of Guatemalan military observers and troops. Our principled position regarding the draft resolution should in no circumstances be confused with contempt for those who proposed it.

**Ms. Lucas** (Luxembourg) (*spoke in French*): Luxembourg is both a State party to the Rome Statute that has strongly supported the International Criminal Court (ICC) since its establishment, and a long-standing partner of Africa. We recognize and respect Africa's commitment to the fight against impunity, which is illustrated by the fact that 34 African States are today parties to the Rome Statute of the International Criminal Court.

Two weeks ago, members of the Security Council met with the Contact Group of the African Union to discuss the latter's request for a stay of proceedings against the President and Deputy President of Kenya. This dialogue was an important opportunity for the Council to hear the concerns of the African Union and Kenya, a State party to the Rome Statute. We take these concerns very seriously, and we said at that time that we were eager to find solutions of benefit to all stakeholders. We reiterate that position now.

Unfortunately, we did not have an opportunity to do so. While differences of opinion within the Security Council continued, a vote was cast. We did not support the draft resolution asking the International Criminal Court to suspend the investigation and prosecution of President Kenyatta and Deputy President Ruto for a period of 12 months, under article 16 of the Rome Statute. There were two reasons for this. First, resort to article 16 was not necessary because there are other resources available to address the concerns of Kenya and the African Union. Secondly, article 16 is, in our opinion, not applicable in this case.

First, there are indeed other means available to address the legitimate concerns of Kenya that its elected leaders should be allowed to conduct the affairs of their country, despite their trial before the International Criminal Court.

The first method available is that of cooperation with the Court. At the request of President Kenyatta's defence team, the Court decided on 31 October to postpone by three months the onset of the President's trial. In addition, the Court has already taken the necessary steps to arrange the two trials so that at any time either the President or the Deputy President will be fully available to manage the affairs of Kenya. Other defence motions currently await a decision of the Court. This shows that the ICC takes the concerns of Kenyan leaders into account.

The second way is that of resort to the Assembly of States Parties to the Rome Statute. At the request of the African Union, the twelfth session of the Assembly, which begins in five days in The Hague, shall include a special segment on charges against Heads of State and Government. The Assembly is the appropriate forum to consider amendments to the Court's rules of procedure and evidence addressing the concerns of Kenyan leaders. Kenya and other States parties are already engaged in this process with the aim of achieving tangible results in The Hague.

Secondly, we have come to the conclusion that article 16 of the Rome Statute is not applicable in the case before the Council. Article 16 of the Rome Statute gives the Security Council the authority to request the ICC to suspend investigation or prosecution for 12 months, through a resolution adopted under Chapter VII of the Charter of the United Nations. The reference to Chapter VII means that the Security Council must assume the existence of a threat to peace due to the

very fact of the proceedings under way in the ICC. We understand the challenges Kenya must deal with. We recognize the real value of the efforts and sacrifices that Kenya has agreed to in order to help maintain regional peace and security, particularly in Somalia and in combating terrorism. But in our view, pursuing the suit in the ICC against the President and Deputy President of Kenya does not of itself create a threat to regional or indeed international peace and security.

We remain willing to continue our dialogue in order to respond to the legitimate concerns of Kenya and the African Union. Next week's session of the Assembly of the States Parties to the Rome Statute provides for that possibility.

**Mrs. Perceval** (Argentina) (*spoke in Spanish*): Argentina abstained in the voting on the draft resolution before us because, as a State party to the Rome Statute of the International Criminal Court, we understand that we are dealing with a court of justice established in order to help eliminate impunity, and that is complementary to and not a replacement for the responsibility of every State — a responsibility that cannot be renounced — to ensure that justice, truth and memory are served in the face of atrocious crimes. Those are the central pillars of Argentina's policy of promoting, protecting, defending and guaranteeing human rights.

We also abstained having taken into account the fact that, in complying fully with the Statute of the Court, it is the responsibility of the Security Council to analyse the subject at hand in strict interpretation of article 16 of the Statute. That means understanding that suspending a trial can be necessary in order to preserve international peace and security while not implying a ruling on the substance of a case under the Court's consideration. We abstained, moreover, because on a number of occasions we have shared our frustration and that of others who see the Security Council as a body that is once again helping to promote the law of the jungle. As the President of Argentina has said, if multilateralism is to be genuinely equitable, compliance with United Nations resolutions is required of weak countries and strong, small countries and large.

We also abstained because we recognize the legitimacy of the claim of those of us that have voluntarily subjected ourselves to the jurisdiction of the International Criminal Court by becoming a party to it, and we see that once again our destinies and the need for true justice are tied to the decisions of political bodies such as the Security Council. That is why Argentina

hopes for the universal participation of all Member States in the Court and that those who defend the fight against impunity will reflect that in a full commitment to ratifying the Statute of the Court.

Argentina appreciates the presentation of the African Union Contact Group of Ministers on Kenya's understandable concerns and the reasons given for not supporting the draft resolution. Argentina has heard them and recognizes the decision of the Kenyan leadership to cooperate with the Court and assume its responsibility as a State party to take the route of going to trial, which would enable a coherent response to Kenya's concerns.

At the moment, the working group on amendments of the Assembly of States Parties to the Rome Statute is focusing on negotiating amendments to the Court's rules of procedure. Argentina is firmly committed to that process, and it is encouraging that we have been working closely with Kenya and other African countries. By historical consciousness and collective fate, we are of the South and we therefor favour dialogue and the search for ways to overcome and avoid dead ends. The people and Government of the nation of Argentina, as our former President Kirchner said, are the children of the mothers and grandmothers of the Plaza de Mayo, and that is why we understand that all victims have the right not to be forgotten or treated with indifference, including those in Kenya in 2007. They all deserve justice, truth, reparations and a guarantee that what happened will not happen again.

Finally, I would like to reiterate Argentina's firm support for the International Criminal Court, and we will continue to focus our efforts on the noble task of its universalization.

**Mr. Masood Khan** (Pakistan): I am taking the floor to explain Pakistan's vote. Pakistan is not a signatory to the Rome Statute and thus not a member of the International Criminal Court (ICC). However, we recognize the rights and obligations of the States that are members of the ICC.

Pakistan voted in favour of the draft resolution before us today for the following reasons. The African Union as a whole, and unanimously, has repeatedly asked the Security Council to defer the cases against Kenya's President and Deputy President, in accordance with article 16 of the Rome Statute of the International Criminal Court, for a period of one year. The African Union has made a determination that the proceedings

of the ICC may pose a threat to the efforts to promote peace and national healing and reconciliation in Kenya. It has further determined that Kenya is a front-line State in the fight against terrorism at the regional, continental and international levels, as was demonstrated by the terrorist attacks in Nairobi in September, and that the ICC proceedings against the President and Deputy President of Kenya will distract and prevent them from fulfilling their constitutional responsibilities, including the oversight of national and regional security affairs. That request was made on sound and solid strategic political and legal grounds. Its logic is compelling.

In making that request, the Government of Kenya and the African Union have been fully conscious of the complexities of the case and its repercussions for peace and security in the region. The African Union is a close partner of the Security Council in the maintenance of regional and international peace and security. Almost two-thirds of the issues on the Council's agenda relate to Africa. In addressing those issues, the support and involvement of the African Union and Africa's subregional organizations are crucial. The African Union has actively cooperated with the international community, the United Nations and the ICC to end impunity and administer international criminal justice. In all the eight cases before the ICC, the African Union has provided critical assistance to the Court.

The African Union has also reached out to the Security Council and engaged it. We appreciated the detailed briefings to the Council from the ministerial delegation led by the Ethiopian Minister for Foreign Affairs on 31 October. The group drew the Council's attention to the peace and security challenges in the Horn of Africa. The members of the Council are unanimous in recognizing the crucial role being played by Kenya in countering the terrorist threat in the region and in promoting peace and stability in Somalia. We have a shared desire to further strengthen the cooperation between the African Union and the Security Council.

The proceedings of the International Criminal Court in the Kenyan case illustrate a tension between demands for justice by international courts and respect for democratic choice for the people of Kenya. That is a new situation; therefore, there should be a new solution that addresses that genuine political and legal predicament.

From the strictly legal standpoint, the principle of complementarity is important. The International

Criminal Court is a court of last resort. The primacy of national jurisdiction needs to be respected. The legal norms of immunity have further complicated the case. The core legal argument is thus the functionality of the offices of the elected President and Deputy President of Kenya. Demands for criminal justice and international prosecutions should help, not hinder, efforts undertaken to create a stable order, reconciliation and sustainable peace.

A provision is already available in article 16 of the Rome Statute for the deferral of the case for a year and its renewal. That article can be justifiably invoked to reconcile the demands of justice and the requirements for peace and stability in the region. The considerations that enabled the Court to postpone by four months the case of the Kenyan President, primarily on the grounds of the functionality of his office, could also provide for a longer deferral, as requested by Kenya.

In the light of all this, we supported the draft resolution on the request for the deferral of the Kenyan case. The draft resolution reaffirms the commitment of the case to end impunity and highlights various developments, including the cooperation of Kenya with the International Criminal Court during the past five years. While the draft resolution could not be adopted, we hope that the dialogue between the Council and the African Union will continue in order to find a pragmatic solution acceptable to everyone. That would be in the best interests of the Council, the African Union and the Court.

We voted in favour of the draft resolution to express our strong solidarity with the African Union and Kenya on political and legal grounds.

**Mr. Churkin** (Russian Federation) (*spoke in Russian*): We supported the draft resolution. We regret that the position of Security Council member States on the matter was divided and that the Council was unable to adopt the proposed decision. We feel that the African countries presented very compelling arguments. Indeed, at such a critical time for Kenya, when the military contingent of that country is playing a key role in combating terrorism in Somalia, and when Kenya itself has become a target for terrorist attacks, the democratically elected President and Deputy President of that country should be able to remain in their country and resolve the pressing tasks faced by their Government.



We would not wish to see events unfold in such a way that insufficient attention were paid to the African continent by some members of the Council, which in turn could lead to the appearance of yet another hotbed of instability in Africa.

The request of the African States does not presuppose any sort of circumvention or violation of the Rome Statute or undermine its integrity. We do not see any attempt here to pit African countries against the International Criminal Court. This is simply a matter of the sound application of one of the norms of the Statute, namely, article 16, which was the very reason for that article's establishment in the first place. In our view, its application would ultimately enhance the authority of the system of international justice among African countries, and demonstrate the system's maturity and readiness to address complex and ambiguous situations responsively.

In our view, the root causes of the situation we encountered today reside, *inter alia*, in systemic problems that derive from the interpretation and application of the Statute, as we have repeatedly stressed. First and foremost, we refer to the interrelationship between its provisions and the standards for the immunity of high Government officials.

To conclude, I would like to underscore the commitment of my country to combating impunity with respect to the gravest violations of international law.

**Sir Mark Lyall Grant** (United Kingdom): Security Council members held a very constructive dialogue with the high-level Contact Group of the African Union last month. We had hoped that that dialogue would be the start of a discussion. We listened carefully and respectfully to the African Union's concerns. We fully understand the desire to allow the President and Deputy President of Kenya to fulfil their constitutional responsibilities. We are engaged and prepared to address those concerns. But there is a right place to do that, and that place is at the International Criminal Court (ICC) and the Assembly of States Parties, not here in the Security Council.

The Assembly of States Parties meets in five days' time. A dedicated segment will be devoted to addressing the African Union's concerns. Preparatory work is already under way and a number of amendments have already been submitted, including one by the United Kingdom on presence through video technology. The Court itself has taken a number of decision that help

to mitigate the African Union's concerns, including staggering the proceedings and excusing presence in exceptional circumstances. On 31 October, the start date of President Kenyatta's trial was put back, for the third time, to February 2014. The Court rightly takes such decisions independently, on the basis of applications made by the defendants. Those developments demonstrate a constructive, creative and legally proper response to the concerns raised.

The ICC, by design, operates in and around conflict situations where there is a threat to peace and stability. It was established as a court of last resort, with the strong support of African States, to deal with such situations. Of the eight situations before the Court, five were initiated at the request of African States parties. Nobody, least of all the United Kingdom, underestimates the gravity of the security challenges in the Horn of Africa, but the question before the Council today was whether or not continuing with the ICC proceedings constituted in itself a threat to international peace and security. In our view, it does not. We therefore do not consider that the criteria for deferral under article 16 of the Rome Statute are met, and we therefore abstained in the voting on the draft resolution.

This assessment in no way changes the United Kingdom's commitment to peace and security in the Horn of Africa and across the continent. We have a long-standing and deep relationship with Kenya. My Prime Minister is personally engaged in supporting African efforts to bring greater peace and stability to a region that has been blighted by violent extremism for too long. The United Nations is supporting over 100,000 peacekeepers in Africa. Just this week, the Security Council authorized an increase of over 4,000 troops for the African Union Mission in Somalia.

We are disappointed that the draft resolution was unnecessarily put to a vote in a way that highlights disagreements within the Council shortly before a meeting of the States parties, the outcome of which we hope will be to reduce those disagreements. Despite that, the United Kingdom will continue to engage through the Assembly of States Parties in a manner as constructive and helpful as possible with a view to addressing the concerns of the African Union, and we encourage others to do likewise.

**Mr. Araud** (France) (*spoke in French*): France regrets that we were drawn today into a vote whose outcome was known in advance. We regret it all the more so because it was unnecessary.

The Security Council met with the Contact Group of the African Union, and that exchange enabled us to reach an agreement on principle with respect to Kenya's role in ensuring regional stability and on the need to find common solutions to the legitimate concerns of the African Union with a view to allowing President Kenyatta to fulfil the obligations entrusted to him by the Kenyan people following the March 2013 elections.

Our disagreement, therefore, resided not on our shared goal but on the way to reach it. A majority of the Council's member States believed that suspending the judicial proceedings by involving article 16 of the Rome Statute was neither applicable nor necessary and that other solutions were available.

For France, the meeting was a launching point to define these shared, pragmatic solutions in the spirit of the customary working relations between the Security Council and the African Union. Those solutions are within reach. The Kenyan lawyers themselves have demonstrated the way by filing procedural motions at the Court, which recommended various relaxations of the proceedings and a deferment of the actual case. The Court itself showed the way by adopting several decisions taking into account the need for the Kenyan authorities to shoulder their responsibilities in a process of alternation that would guarantee that neither the President nor the Deputy President would ever both be absent simultaneously from Kenya, as well as deferring the proceedings for several months and allowing them to participate only in some parts of the case. The States parties themselves, in the framework of joint work with Kenya, showed the way by recommending various rearrangement of procedures, including using video conferencing.

The meeting of the Assembly of States parties in the Hague next week will provide an opportunity to realize these fruitful exchanges. But the choice made was to move forward hastily, for which we were offered no explanation. Such haste is useless and fraught with the risk of an artificial and dangerous confrontation between the African Union and the Security Council, which would should like to avert. These are crucial partners in resolving crises on the African continent. That is why my country abstained in the voting, proving that we hope to continue the dialogue as we move beyond this painful episode.

France is a partner of the African Union in Mali, Somalia and the Central African Republic. We are mobilizing together, on the basis of shared values,

to help civilians in need. France has lost soldiers in defending those populations. France is a friendly ally of Kenya, which is a democratic and respected country. We understand its concerns and the role it plays in support of regional stability, in particular in Somalia. In that spirit, France will continue to work with Kenya and African Union countries to find solutions to allow Kenya's leaders to take up their responsibilities, while also respecting the integrity of the Rome Statute. The various proposals put forward by various States, including Kenya, are on the table of the Assembly of States Parties to the Rome Statute, which will meet as of 20 November. We support the principle. A solution is always within reach. We must grasp it. We must look to the future.

**Mr. Laassel** (Morocco) (*spoke in French*): We regret the absence of consensus on the draft resolution before us, which should have brought us together rather than divide us. We wish to underscore that the meeting of the African ministerial delegation with the members of the Security Council on 31 October allowed for sincere and frank discussions on this matter. The ministerial African delegation also had an opportunity to present the substance and reasoning behind Africa's presentation of the draft resolution. We share those motives.

Kenya has undertaken a number of significant reforms in recent years, including by relaunching the process of national reconciliation in 2008, the adoption in 2010 of a new Constitution, and the establishment of institutions to protect human rights. These reforms led to the democratic election of Mr. Uhuru Kenyatta as President and Mr. William Ruto as Deputy President. Moreover, Kenya, a target of terrorism in Africa, has shown untiring commitment to fighting terrorism, which is an enormous challenge to its stability and that of East Africa as a whole. The Westgate Mall attack in Nairobi in September, which caused dozens of deaths, attests to that.

During consultations on the draft resolution, Africa openly and constructively committed itself to reaching a consensus-based document. At this time, we express our appreciation to the other members of the Council for their willingness to discuss this matter and for their efforts to find common ground, but we regret that it was not possible to achieve a united position on the draft resolution.

**Ms. Power** (United States of America): The United States abstained in the voting because we believe that the

concerns raised by Kenya regarding the International Criminal Court (ICC) proceedings against President Kenyatta and Deputy President Ruto are best addressed within the framework of the Court and its Assembly of State Parties, and not through a deferral mandated by the Security Council. This position is consistent with the view that we shared with the African Union Contact Group at the Council's informal interactive dialogue at the end of October.

Furthermore, the families of the victims of the 2008 post-election violence in Kenya have already waited more than five years for a judicial weighing of the evidence to commence. We believe that justice for the victims of that violence is critical to the country's long-term peace and security. It is incumbent on us all to support accountability for those responsible for crimes against humanity.

At the same time, we want to emphasize our deep respect for the people of Kenya. We share their horror and outrage at the recent Westgate Mall terror attacks and understand their desire both for effective governance and for accountability under the law. We are mindful as well of the importance of those issue to the States members of the African Union that have raised similar concerns. We recognize that the situation the Court is confronting in those cases is a new one. The ICC has never before had a trial of a defendant who is also a sitting Head of State or a person who may act in such a capacity, and who has appeared voluntarily subject to a summons. Accordingly, we are encouraged that Kenya is continuing to pursue its concerns through an ongoing ICC process.

We are also encouraged that the Assembly of States Parties, which includes the Government of Kenya, is working to enable trial proceedings to be conducted in a manner that will not force the defendants to choose between mounting a vigorous legal defence, on the one hand, and continuing to do their jobs, on the other. The Assembly, which under the Rome Statute has responsibility for overseeing the Court's administration, will meet next week and have the chance to engage in dialogue and consider amendments that could help address outstanding issues.

Because of our respect for Kenya and the African Union (AU), and because we believe that the Court and its Assembly of State Parties are the right venue for considering the issues that Kenya and some AU members have raised, we decided to abstain rather

than vote against on the draft resolution before us. The United States and Kenya have been friends and strong partners for half a century. We value the friendship and will continue working with the Government and the people of Kenya on issues of shared concern, including security against terror, economic development, environmental protection, the promotion of human rights and justice. We also continue to recognize the important role that the ICC can play in achieving accountability, and are steadfast in our belief that justice for the innocent victims of the post-election violence in Kenya is essential to lasting peace.

**Mr. Mehdiyev** (Azerbaijan): Azerbaijan is not a party to the Rome Statute of the International Criminal Court (ICC). Nevertheless, we strongly believe that the protection and vindication of rights, as well as insistence on accountability, contribute to the maintenance of international peace and security. Our decision to vote in favour of the draft resolution before us today is based on the following understanding.

First, Kenya and the region in which it is situated are facing complex security challenges. Kenya is a front-line State in and one of the key regional contributors to the fight against international terrorism. In that connection, the judicial proceedings against the country's senior officials would undoubtedly create serious obstacles to the normal functioning of State institutions in Kenya and thereby pose a threat to the ongoing efforts to ensure and promote peace and stability in the region. Azerbaijan understands the concerns of Kenya and the African Union, and deems them legitimate and reasonable.

Secondly, the request for deferral cannot be considered a measure of impunity. It is important that the draft resolution recalls the need to fight impunity and to hold accountable all perpetrators of the 2007-2008 post-election violence in Kenya.

Thirdly, the Government of Kenya has demonstrated a strong commitment to fighting impunity and to complying with its international obligations, including those deriving from the Rome Statute of the International Criminal Court, to which Kenya has been a party since 1 June 2005. It should be particularly noted that both the President and the Deputy President of the Republic of Kenya have extended full cooperation to the ICC process.

Fourthly, the Government of Kenya has made considerable efforts to restore the stability and



security in the country since the 2007 post-election political crisis. The peaceful and democratic conduct of the general elections in March is illustrative of the country's progress and determination to move forward.

Fifthly, the concept of complementarity is the cornerstone of the operation of the International Criminal Court. We believe that Kenya is capable of investigating the alleged post-election crimes, and we take note of its ongoing efforts and measures in that regard.

Azerbaijan voted in favour of the draft resolution before us today to express its support for the deferral of the investigation and prosecution against the President and Deputy President of the Republic of Kenya for a period of 12 months, in accordance with article 16 of the Rome Statute of the International Criminal Court.

**Mr. Quinlan** (Australia): Australia deeply regrets that a vote was called today. It was unnecessary and, as has been said, we have all lost. We have valued the dialogue with Kenya and the African Union (AU) on this very difficult question and believe that further dialogue was needed. The concerns of Kenya and the AU were clearly conveyed to the Council by the African Union ministerial Contact Group. We listened carefully. There was a genuine willingness on the part of all Council members to consider those concerns.

Australia certainly understands the security challenges that Kenya faces. We recognize that the security situation in East Africa is volatile and precarious, with serious threats that are flowing across borders with deadly results. We acknowledge that President Kenyatta and Deputy President Ruto face a serious challenge in trying to meet their trial obligations at the same time as devoting their attention to tackling security threats in their country and the region. But that challenge must be balanced against the need to preserve the role of the International Criminal Court (ICC) in support of international peace and security.

Australia is a staunch supporter of the ICC, the principles it embodies and the integrity and independence of the Court, which are central to its mandate to end impunity for serious international crimes. We consider that Security Council action under article 16 of the Rome Statute to defer an investigation or prosecution should be taken only in exceptional circumstances when the proceedings themselves threaten international peace and security and alternative options have been exhausted. That threshold was not

met on this occasion, and therefore we were not able to support the draft resolution.

In any case, there were real alternatives to pressing ahead with a divisive vote in the Council on the question of deferral. The ICC Trial Chamber has already postponed the start of President Kenyatta's trial until 5 February 2014, at the request of his defence team. The Assembly of States Parties will meet next week, and constructive work is already under way by parties on proposed amendments to the rules of procedure and evidence to help address Kenya's concerns. Australia will continue to listen closely to African States parties' views at the Assembly and will adopt a responsive and flexible approach to any proposal that States parties bring to the Assembly for its consideration.

Australia is determined to do what it can to ensure that President Kenyatta and Deputy President Ruto are able to fulfil their constitutional responsibilities. In turn, we trust that Kenya and other African States, particularly those with relevant obligations under the Rome Statute or resolutions of the Council, will cooperate in full with the ICC to ensure that the Court can continue to play its role in contributing to our common objective of deterring the commission of serious international crimes, which is intrinsic to achieving peace and security. We are also determined to continue to work to strengthen the relationship between the Council and the African Union, as was cited so well by the observer of the AU in the Council just a few months ago: "The United Nations needs a strong African Union, and the African Union needs a strong United Nations" (*S/PV.7015*, p. 7).

**Mr. Oh Joon** (Republic of Korea): Since the issue of the Kenyan cases at the International Criminal Court (ICC) was brought to the attention of the Council, my delegation has had thorough deliberations on the issue in consultation with other Council members. Throughout the process, my delegation has been greatly benefitted by the close cooperation and partnership rendered by African members in the Council and other members of the African Group in the United Nations. The dialogue with the high-level Contact Group of the African Union (AU) last month, in particular, helped us to better understand the situation in Kenya as it faces various security challenges, as well as its efforts to fight international terrorism and to move ahead with the national reconciliation process.

We also found the AU's concern over the issue to be genuinely legitimate. However, my delegation came

to reaffirm its conclusion that the Security Council is not the right venue to deal with this issue, and that ICC issues had better be addressed in the framework of the ICC, not least considering the upcoming Assembly of States Parties to the Rome Statute of the ICC. It is desirable not to set a precedent of the Security Council's involvement in the ICC's legal process. We believe that this will be in the best interest of the ICC, of the Security Council and, eventually, of the whole United Nations membership. For that reason, my delegation decided to abstain in the voting.

**Mr. Menan** (Togo) (*spoke in French*): Togo deeply regrets that the Security Council was unable to agree to adopt the draft resolution that was circulated today, requesting a 12-month deferral of the proceedings against the President and Deputy President of Kenya, under article 16 of the Rome Statute, as requested by the African States. Togo regrets that the Council remained divided to the end on such a significant request of capital importance to Africa.

My country nevertheless hopes that this unfortunate day, on which the Security Council found itself unable to reach a consensus even on giving the benefit of the doubt to Africa, will not have a negative impact on relations between Africa and the Security Council. For Togo, the ongoing promotion of trust between the African Union and the Security Council remains necessary so as to promote and strengthen peace and security in Africa. The mitigation of crises and conflicts on the African continent depends on that very trust, for the growing number of African issues on the Council's agenda, which are referred to every time Africa is discussed in the Chamber, should be no cause for joy or satisfaction for the Council, much less for Africa.

**Mr. Gasana** (Rwanda): Is this the right place to be today to discuss this issue? Yes, it is. Did we precipitate this case this year? No. Does Africa seek confrontation? Not at all; otherwise, we would not be in the Chamber today. I would ask members to follow my argument.

Terrorism is the most serious threat to international peace and security. It affects all the people of the world, without discrimination, from the World Trade Center in New York to the Westgate shopping mall in Nairobi. Fortunately, we have countries; we have leaders. We are committed to the fight against terrorism, and Kenya and its President and Deputy President are with us. They are at the forefront of the fight against international

terrorism, and we are grateful for their commitment and determination in the fight against Al-Shabaab in Somalia — a country where African blood is shed on behalf of this Council, which is supposed to bear the primary responsibility in the maintenance of international peace and security.

In that regard, His Excellency President Uhuru Kenyatta and Deputy President William Ruto should be respected, supported, empowered at this time — not distracted and undermined. That is why, after the vote of this morning, Rwanda is expressing its deep disappointment over what transpired regarding the request for the deferral of the cases against the President and Deputy President of Kenya, despite the proactive efforts of Africa to engage the Security Council in a legitimate process in the interest of the maintenance of international peace and security.

That is why this is actually the right place. The failure to adopt the draft resolution before us today, which has been endorsed by the countries of the entire African continent, is a shame; indeed, it is a shame. Let it be written today in history that the Security Council failed Kenya and Africa on that issue.

I express my deep gratitude, Mr. President, to your delegation and country, China, as well as to the delegations of Azerbaijan, Pakistan and the Russian Federation for voting in favour of the draft resolution before the Council, together with the delegations of Morocco, Togo and Rwanda. Today's disappointing vote undermines the principle of the sovereign equality of States enshrined in the Charter of the United Nations, and confirms our long-held view that international mechanisms are subject to political manipulation and are used only in situations that suit the interests of some countries. It also undermines the tremendous efforts of the Kenyan Government to achieve the reconciliation of the Kenyan people. In that connection, I wish to recognize, at this moment, the Speaker of the Senate of Kenya, who is present among us.

Six months ago, in May, Kenya tried to engage the Security Council regarding the cases against its President and Deputy President. I must state that the Council heard, but did not listen. Yes, the Council did not listen. Then, on 12 October, African Heads of State and Government, in an extraordinary session of the African Union (AU), considered the threat posed by terrorism in Kenya and in the Horn of Africa. Consequently, they decided to request the Security Council, through

Kenya, to defer the investigation and prosecution of President Kenyatta and Deputy President Ruto for 12 months so as to allow them time to deal with the threat of terrorism.

It is not that, in coming before the Council today, we have sought confrontation. No, we have not. We believed that the request was reasonable. We believed that the request was legitimate, as it was based on the provisions of the Rome Statute of the International Criminal Court (ICC). In order to ensure that the Council would take the AU message seriously, our leaders set up the African Union high-level contact group on the ICC, which came to New York. It engaged in an interactive dialogue with Council members and delivered a message from Africa requesting their support. Is that a confrontation that the Council would have wanted to have take place here, today? No, not at all.

We were therefore hoping that, after extensive consultations, the Council would express solidarity with Kenya and with Africa, by negotiating in good faith and adopting the draft resolution. That did not happen, as some members of the Council even refused to negotiate on any single paragraph. We profoundly regret that.

Our colleagues who did not vote in favour of the draft resolution have argued — as members have heard — that the Kenyan situation does not meet the threshold needed to trigger the application of article 16 of the Rome Statute. They have explained that article 16 shall be applied only when the investigation and prosecution could create, or worsen, a situation threatening international peace and security.

I am here and I am wondering: If a terrorist attack by members of Al-Shabaab — an Al-Qaida-linked movement that has killed more than 70 innocent victims and wounded 200 others — does not meet the threshold line that other situations have crossed, then which one would? If a clear and present threat of terrorism against the Kenyan people, resulting from their determination and courageous intervention in Somalia, does not meet the threshold, what other threat can be alleged to do so? Are we in the wrong place today? No.

May I request that all members of the Council recall why article 16 of the Rome Statute was proposed in the Council more than 10 years ago. Let me repeat that question. May I request that all members of the Council recall why article 16 of the Rome Statute was

proposed, more than 10 years ago. That article was not proposed by an African State — not at all. It was proposed by some of the Western Powers present at the Council table to be applied solely in their interest. In other words, article 16 was never meant to be used by an African State or any of the developing countries. It seems to have been conceived as an additional tool for the big Powers to protect themselves and protect their own. Is that not so? That is how it appears here today.

Council members will remember that some countries that did not vote in favour of the draft resolution have enacted laws to refuse any cooperation with the ICC that involves targeting their nationals, to sanction countries cooperating with the ICC in that regard, and even to use military means to release any of their nationals arrested at the request of the ICC. I hope that all Council members can agree that that is a far cry from our modest request for a deferral of 12 months — just 12 months.

In that regard, we believe that an equal application of all of the provisions of the Rome Statute not only strengthens the ICC but also legitimizes it as a credible and fair player. Justice becomes so when the vulnerable and the strong have equal protection. It is unfortunate that the ICC will continue to lose face and credibility in the world as long as it continues to be used as a tool for the big Powers against the developing nations.

We have always been preached to about the values of democracy and self-determination, but surprisingly, those who taught us those principles do not believe in Africa determining its fate at all. Instead, Africa has been given a bitter pill to swallow, and we have seen that tendency during the whole process leading up to the vote we just held.

In the same context, African Heads of State and Government proposed, in their wisdom, a Kenyan solution to a Kenyan problem. New York thought otherwise; no, New York is a beautiful city — the Council decided otherwise. The Western Powers indeed had an alternative solution to resolve the Kenyan concerns, namely, interaction with the Court and with the Assembly of States Parties to the Rome Statute. Is this the right place for that? Yes, it is. Is the Council the right place? Yes, for those that are members it is also the right place. We do not say that it is not — it is — but let us come here and interact with the Council. The Council must hear Africans; hear what the Heads of State of Africa want; hear what the Kenyans want.

On the subject of the Court, let me say that, with respect to acting too precipitously, we have to be very careful about what the Council is stating. Let me say that, after five long years of procedures against Kenyan leaders, we were surprised that, suddenly, the ICC was willing to show flexibility on the very day that the African Contact Group was interacting with the Council. Whose hand was behind that? Why was it on that very day? Why did they decide that very day?

That shows us that, in fact, maybe this is not the right place to be, that the Africans are not in the right place to decide this matter, and that we belong elsewhere. But we do belong here. As members have heard, two-thirds of our time here in the Security Council is dedicated to Africa. That is why the Africans came here. So how can the Council explain to me the fact that, all of a sudden, the Prosecutor said:

“You know what? Let me give you four months now. It is okay, you do not need to go and bother that exclusive club. No. Get out of there.”

No. It cannot work like that. Are we living together in a global world, in a fraternity? Are we really? I am asking myself. No, it cannot work and it cannot continue like this.

The Group was also surprised, actually, to learn that members of the Council were aware of that issue. Indeed, they asked us about the decision to request a postponement of the commencement of the case against the President of Kenya even before the decision was actually taken. That raises serious questions concerning the independence of the handling of this case. Yes, members have forgotten that. They have started to say that it is not the right place, that this is too precipitous, that this is a confrontation. Come on. We do not want confrontation at all. Actually, Kenya is a member of the ICC. Members saw the Kenyan Deputy President go there. How can they say that we want confrontation or that we are too precipitous?

As for the Assembly of States Parties, I would remind members that the Assembly is composed only of States parties to the Rome Statute, and that Morocco, Togo, Rwanda and other members of the Council are not parties to the Statute and could not participate in the deliberations concerning the Rome Statute. I refer here to what the representative of the Russian Federation was telling us. So why would there be any amendment to enhance respect for African leaders? The issue at hand is not simply a legal matter; it is an

issue related to international peace and security, and the Security Council cannot abdicate its responsibility in that matter.

In conclusion, one of the positive outcomes of the process that led to the vote this morning is the reaffirmation of African unity and solidarity. Today, the Chairperson of the African Union is represented here by the Permanent Representative of Ethiopia, whom I recognize, and the representative of the country concerned, namely, Kenya. I therefore thank all African members and their friends, and I hope that we will continue to fight for our rights and for the equal sovereignty of States and to advance the agenda of mutual respect among nations. There is something very special in Rwandan culture that we call *agaciro*, or our dignity. Today was a great rendez-vous of *agaciro*, of our dignity and of African dignity.

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

The Chinese delegation has just voted in favour of the Council's draft resolution on deferring International Criminal Court (ICC) proceedings against the leaders of Kenya. We regret that the Council was unable to adopt the draft resolution.

Kenya is a country of major importance in Africa. In recent years, Kenya has been making steady efforts to reform its judicial system, promote national reconciliation, peacefully resolve ethnic conflicts and gradually restore stability and development. China would like to express its appreciation for that.

Kenya has long been at the forefront of the fight against terrorism and has been playing an important role in maintaining peace and stability in the Horn of Africa, Eastern Africa and the entire African continent. Deferring the ICC proceedings against the leaders of Kenya is not only a matter of concern to Kenya, but also a matter of concern for the entire African continent. It is in fact an urgent need in order to maintain regional peace and stability. It is therefore a matter of common sense that the international community should help the Kenyan leaders to focus their attention on discharging their mandate and to continue their role in maintaining peace and stability in Kenya and the wider region. In exercising their jurisdiction, international judicial institutions should abide by the norms of international relations, follow the principle of complementarity and



respect the judicial sovereignty, legal traditions and current needs of the countries concerned.

For some time, members of the Security Council have held a comprehensive and in-depth discussion with the African Union and Kenya over deferring the ICC proceedings against the Kenyan leaders. China believes that the request of the African countries is reasonable and well founded on the basis of the purposes and principles of the Charter of the United Nations. Their objective is to maintain peace, stability and security in the region and to effectively fight terrorism. They request that the democratically elected leaders of Kenya be accorded basic respect in matters of African peace, security and stability. African countries best understand their needs.

The Council should therefore heed and positively respond to the common call of the African Union and the vast majority of African leaders. China will continue to support the efforts of Kenya, the African Union and most African countries to find a real solution to the issue under consideration.

I resume my functions as President of the Council.

I now give the floor to the representative of Kenya.

**Mr. Kamau (Kenya):** Africa came to the Security Council in the belief that the Council was in command of its own reality and master of its mandate, that the Rome Statute was fully operable, that article 16 of the Statute was alive and an actionable piece of legislation and that the Security Council was capable of executing its singular mandate and responsibility under that Article. Africa has learned that, despite the Security Council's own recognition of the recent terror attacks in Nairobi and the terror threats in neighbouring capitals as threats to international peace and security, that recognition counts for little in the Council when article 16 is under consideration.

Sadly, for some members of the Council, the heartbreaking loss of lives and scores of shattered bodies at the Westgate Mall do not meet the unspecified and imaginary threshold of article 16. In fact, apparently, the threat to the stability and political management of a country that would result from a leadership removed amid a regional war against terror do not meet that imaginary threshold either.

Africa came to the Council to seek a deferral by the International Criminal Court (ICC) for 12 months — nothing more and nothing less. We are

not here to discuss the cases or the Assembly of States Parties. That is not the business of the Council. Africa is not putting political pressure, as some misguided and purist activists have claimed. It is the law. Africa wanted both the spirit and the letter of the law applied — not a favour or a handout, just the application of the law. Africa wanted that because we believe that the Rome Statute belongs to us as much as anybody and that its application would be without fear or favour. We were under the impression that the good and global citizenry of many African States in fighting terror and promoting international peace and security would resonate and have meaning in the Council.

We were wrong. The deferral has not been granted. Africa's request, through the abstentions by certain members of the Council, has been voted down. Reason and the law have been discarded. Fear and distrust have been allowed to prevail. Africa is disappointed. We regret that very much.

We take note that some Security Council members have chosen to tie the denial of the request by Africa to the paranoid fear of an imaginary and possible future abuse of article 16 by countries that has nothing to do with the prevailing matter before the Council, the pressing terror threats to East Africans and the need for an adjunct, sustained and uninterrupted leadership. Such a turn of events in the Chamber is simply sad, absurd and confounding. It does nothing for building confidence in or solidarity with the Council, especially at a time when the usefulness of the Council is under question.

It would seem that Africa should come to the Security Council only after taking into account all possible imaginary circumstances of abuse of the Statute and other permutations of possible negative applications that could potentially arise. Only then can a Member State contemplate an affirmative decision by the Council on the basis of article 16. Clearly, that is impossible.

Yet, with anything less, we face accusations of setting a bad precedent and of breaking seals. Such accusations come thick and fast, accompanied by the thinly veiled threat of facing the wrath of the ICC and its cabal of European Assembly of States Parties members and their friends. The singling out of some African Council members for particular criticism and vitriol has been unfortunate and uncalled for. The deferral request came from the entire continent. Clearly, to certain Council members, the supposed fear of setting



a precedent or of treading on legal niceties is much more important than the need to promote international solidarity, peace and security or helping to maintain stability in a nation or region under the threat of terror.

Indeed, our understanding is now clear. The Security Council is no institutional destination for solving complex and fluid international security and political problems. For Africa, the message is that we need stay only within the African family to solve unusual and complex political problems, working within the African Union to seek solutions to the challenges that we face. That is all right with us.

Be that as it may, despite appearances, the Security Council is as much an institution of Africa as of any region. For us, it would seem that many members of the Council are stuck in a time warp. Some members, it seems, perceive Africa as if it were caught in the reality of the 1990s and a few, I dare say, as if we were caught in an even earlier era. One might ask why I say that. It is because there seems to us little if any confidence in either Africans or African solutions among some Council members. There is little trust in our ability to understand our reality, manage our affairs and act in the best interest of our people and countries.

Our engagement here has been met by some with derision, suspicion, impatience and even irritation. At every turn, the bogeyman of impunity and dictatorship has been dragged out to devastating effect. That is wrong, and it is unfair, and it is sad and it is tragic. It is an indictment on the state of international relations at the dawn of the twenty-first century.

For Africa, the Rome Statute has failed its first crucial test in the Council and has done so in spectacular fashion, in the full glare of the African continent. The Statute is clearly deeply flawed, inoperable and inapplicable in the context of the Council. Nevertheless, and without prejudice to the foregoing, Kenya is grateful for the recognition given to it and its concerns by all the members of the African continent and their respective Heads of State and Government, as well as the African Union Commission and its leadership. Africa's solidarity around this issue has been a watershed; it has been heartwarming and simply amazing.

Kenya, like the rest of Africa, is also most appreciative of the support and direction that the deferral draft resolution has received both from the African member States of the Security Council — Rwanda, Morocco and Togo — and from the other four members

of the Security Council: Russia, Pakistan, and in particular Azerbaijan and China in their respective facilitative roles as President.

There is little doubt that the victims of the 2007 post-election violence deserve justice. But no one recognizes that more than Kenyans themselves and no one here should doubt that, or imagine themselves more concerned than Kenyans and, for that matter, than Africans for the victims of our mishap in 2007.

In the name of Africa and in the name of Kenyans, I would like to express my deepest gratitude for the guidance, camaraderie, solidarity and support that we have received and enjoyed as a Mission and as a Government in this effort. And we also thank those who saw it fit to give us support inside and outside the Council. Kenya will not forget. Africa will not forget. For many of us, our business here is done, but the matter is not closed. Clearly, however, the Council has removed itself from being part of an amicable solution and with that it has done irreparable damage to the Rome Statute and its furtherance in the future.

**The President** (*spoke in Chinese*): I now give the floor to the representative of Ethiopia.

**Mr. Alemu** (Ethiopia): I thank you, Mr. President, for the opportunity to speak as the representative of the Chairperson of the African Union (AU) on a very vital issue for Africa whose historic significance and value cannot be overstated. We have indeed been fortunate that the initiative of African Heads of State and Government — no matter how disappointing, as we have seen, the result may have been — has coincided with your presidency and, prior to that, with the presidency of Azerbaijan, to which we are equally indebted. We salute both presidencies, on behalf of our continent, on whose behalf our leaders speak.

I would like to thank our colleagues on the Security Council for having strengthened our confidence in the unity of our great continent and for having demonstrated the indomitable spirit of the people of Africa in ensuring that their voice is heard and that their ownership of their policies and strategies, including for achieving peace and security, is respected. We have absolutely no doubt in our mind that the reason why the three African members of the Security Council stood firm and remained united under difficult circumstances was their conviction that what they had was a just cause and what African leaders were requesting was far from difficult for the Security Council to meet. The Council

was simply being asked to discharge its responsibility under the Charter. It failed to rise to the occasion. It failed to demonstrate that it takes seriously ownership by Africa of its present challenges and its future.

Let me reiterate, this is not now a Kenyan matter. It is an African issue.

I would also like to express profound appreciation to those members of the Security Council that felt that African Heads of State and Government know what is best for Africa better than most, and decided to support us on the request for deferral. At the minimum, those members of the Council must have concluded that African Heads of State and Government, some of whom are the original founders of the International Criminal Court (ICC), deserve the benefit of the doubt. That is what has been denied them by the rest of the Council members, in some of which we had great confidence indeed that they would contribute to raising the level of trust between Africa and the Council. The argument that there are other alternatives cannot be taken as a serious argument. What Africa has asked is for the Council to exercise its authority and carry out its responsibilities.

The African case for deferral was made by our Ministers in the Contact Group when they had the opportunity a while ago to engage the Security Council in an interactive dialogue. The African case was presented by them in a sincere manner and with passion. That is what one does when one is earnestly committed to a cause. They tried to convince the Council that this was not a Kenyan matter but an African one, which has given rise to a great deal of concern with respect to the peace, stability and security of Kenya and the region. Our Ministers emphasized that, given the delicate situation in the region in connection with the continuing terrorist threat, the distraction of the attention of the two Kenyan leaders from their leadership obligation would represent a grave threat to regional peace and security.

The position of African leaders is that the continuation of the ICC process itself constitutes a threat to the peace and security of the region in Kenya. The logic is compelling, as the representative of Pakistan said earlier so eloquently. It cannot be questioned that African leaders are closer to Kenyan leaders than most others. No doubt, what Africa was asking was within the law. Article 16 of the Rome Statute gives authority to the Security Council to secure deferral of cases under the ICC remit for a period of 12 months by exercising its

power under Chapter VII of the Charter of the United Nations. There is no doubt for us in Africa, who live next door to Kenya, that the situation in Kenya and the region merits a favourable response from the Council.

At the risk of boring members, because this was also said by my Minister when he addressed the Council in the interactive dialogue, the Security Council, in its press statement issued on 21 September, while condemning the Westgate terrorist attack in Nairobi, said:

“The members of the Security Council reaffirm that terrorism in all its forms and manifestations constitutes one of the most serious threats to international peace and security.” (SC/11129)

During times such as these, the Commander-in-Chief of the Kenya Defence Forces ought to be given support, rather than distracted by a body whose track record on African matters has not exactly been the kind that inspires confidence. The African request could not be rejected on legitimate grounds. Let us not kid ourselves; abstention under the circumstances amounts precisely to that — rejection.

I want to go back and talk a little bit about what I said earlier with respect to the failure of the Council to give even the benefit of the doubt to African leaders. Obviously, what we see here is essentially the question of trust being the elephant in the kitchen. The lack of trust in the ability of Africa to strike the proper balance between security and justice must be suspected to be the major source of the problem. How else would the Security Council tell African leaders that their concern about the peace and security of Kenya and the region has no legitimate basis? The empirical reality supports African leaders, and recent developments have in fact accentuated the concern.

Have African countries been found wanting when it comes to the question of justice and combating impunity? If truth be told, although we are not perfect, our recent performance in that regard makes us second to none. The fact that we put our money where our mouth is has been confirmed time and time again. The AU is not a State-centric organization that allows sovereignty to be used as a shield for impunity. One of the solemn obligations of member States is to allow

“the right of the Union to intervene in a member State pursuant to the decision of the Assembly

in respect to grave circumstances, namely, war crimes, genocide and crimes against humanity”.

“Africa tolerates impunity” is the mantra of those who still want to engage Africa as teachers, not as equals — a throwback to an earlier period that we all want to forget, but must draw lessons from.

The AU may not be, for obvious reasons, strong enough to address all the challenges Africa is facing in ensuring peace and security in the entire continent. That is why we remain grateful to all those who have been helping us to make progress in that area. We are not unmindful of those contributions, including, most significantly, the contributions of those in the Council who felt that on the critical question of deferral they should not be with us. They are wrong, and they have offended Africa, an Africa that has not only expressed its commitment to fighting impunity and to fidelity to constitutionalism, but has demonstrated those commitments in practice. In other words, for African leaders not to be trusted — and that is what the decision of the Security Council amounts to — is a paradox that perhaps highlights the challenge we still face in creating effective international cooperation to secure a peaceful world.

We do not want to be misunderstood here. We do not claim that there has been no cooperation between us and that Africa has not benefited from it. It has, and it is indebted for that. But support, no matter how important, should not lead to loss of ownership. There is no doubt that Africa has also shown how much it is prepared to handle its problems. But it is through effective partnership that we can thrive. The progress

achieved in Somalia, the Sudan, South Sudan, Mali and others would not have been happened without that partnership.

Over the past few weeks, as a continent, we tried to ask, in a spirit of partnership, that we be understood, and that the united calls of all African nations be heeded on a matter of great importance to Africa’s peace and security. The response we just received is bound to make Africa draw the logical conclusion as to how quite a few in the Security Council have difficulty in seeing Africa exercise ownership of its policies and strategies for peace and security of the continent. That does not make anyone hopeful about the future.

It is for African leaders, in their wisdom, to draw the proper conclusions from this episode, which cannot be seen as a proud chapter in relations between Africa and the Security Council — not that we have had too many proud chapters, anyway. That Rwanda, as a member of the Council, together with its two other African brotherly countries, Morocco and Togo, has spearheaded that effort is indeed another paradox.

But we do not lose hope easily. We will persevere and our unity is our strength — the strength we want to use to advance the principles of democracy in international governance, including in the area of security.

**The President** (*spoke in Chinese*): 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 noon.*