



SECURITY COUNCIL REPORT UPDATE REPORT



28 July 2008 No. 4

Sudan

Expected Council Action

The Council is expected to adopt a resolution renewing the UN-AU Mission in Darfur (UNAMID) by 31 July. But there are significant divisions as a result of South African and Libyan proposals to include a paragraph suspending proceedings relating to Darfur before the International Criminal Court (ICC). This and other issues are expected to be taken up in informal consultations today, 28 July.

It is unclear whether a compromise on the ICC issue will be possible. Alternative scenarios may come to the forefront, including:

- agreeing on a wait-and-see approach based on the fact that no ICC arrest warrant can actually be issued until it is approved by the judges and this step has not yet occurred. This scenario could lead to a simple renewal resolution without mention of ICC issues;
- adopting a shorter renewal or a rollover for a limited time; and
- introduction of a formal amendment to the UNAMID renewal draft to be voted separately at the formal Council meeting.

Key Recent Developments

On 14 July, the chief prosecutor of the ICC, Luis Moreno-Ocampo, presented to ICC judges an application for a warrant of arrest against Sudanese President Omar Hassan al-Bashir in connection with alleged genocide, crimes against humanity and war crimes in Darfur.

(ICC judges will now have to rule on whether to grant the warrant, but an early decision seems unlikely. If it is granted, states parties to the Rome Statute are under obligation to execute it if Bashir is in their territory. Sudan, not a party to the ICC's Rome Statute, is also obliged to fully cooperate with the ICC under Security Council resolution 1593.)

The Sudanese government strongly objected to the warrant request, warning that it would negatively impact a peace process in Darfur, humanitarian operations, Sudan's cooperation with UNAMID's deployment and the north-south situation. The AU, the

Arab League, independent observers and some Sudanese opposition elements also voiced concerns. By contrast, various UN member states and civil society organisations renewed earlier statements of concern about justice and accountability issues in Darfur, and urged strong support for the independence of the Court and the chief prosecutor.

Sudan launched domestic and diplomatic efforts to counter the request. This included pressure particularly through the Arab League and AU member states for Security Council action to suspend ICC proceedings under Article 16 of the Rome Statute. The article provides that:

“[n]o investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.”

Within Sudan a government committee was formed to explore options to be presented to the international community to encourage support for the suspension. The committee is chaired by representatives of the southern Sudan Peoples’ Liberation Movement (SPLM). Media reports suggest that the SPLM is concerned about the implications of the warrant of arrest over stability in Sudan and implementation of the north-south Comprehensive Peace Agreement (CPA). On 23 July, SPLM leader and Sudanese Vice-President Salva Kiir reportedly expressed support for a delay in ICC proceedings.

On 21 July, the AU Peace and Security Council (PSC) issued a communiqué:

- requesting a Council resolution suspending ICC proceedings;
- inviting establishment of an African high-level panel to propose recommendations including a truth commission;
- encouraging the parties to the conflict to address justice and accountability issues in peace negotiations; and
- urging Khartoum to bring perpetrators to justice.

(The PSC currently includes Algeria, Angola, Benin, Burkina Faso, Burundi, Chad, Ethiopia, Gabon, Mali, Nigeria, Rwanda, Swaziland, Tunisia, Uganda and Zambia.)

On 22 July, the Organisation of the Islamic Conference (OIC)’s Group in New York wrote to the Council’s president seeking the Article 16 suspension of proceedings against President Bashir.

The Arab League proposed a separate plan, which media reports suggest initially included a proposal for Sudan to surrender Ahmad Haroun and Ali Kushayb (against whom there are already in existence formal ICC arrest warrants) or the establishment of a regional court. Khartoum reportedly rejected both. The proposal now appears to be that Sudan would pledge to step up domestic judicial proceedings with international

monitoring and the Arab League would present request for a Council suspension of ICC proceedings.

Sudan indicated it might revive domestic human rights courts, reportedly inviting international experts to assess the state of Sudan's judiciary. But no further details appear to have emerged as to whether trials would resume, and there is controversy as to whether Sudanese law includes provisions curbing war crimes, genocide and crimes against humanity in line with international standards. It is also unclear whether Kushayb and Haroun would be included in domestic judicial proceedings.

Sudan also seems to be proposing an all-inclusive peace conference, promising cooperation with UNAMID and renewing pledges of implementation of the Darfur Peace Agreement. But Khartoum also seems to be sending a variety of conflicting signals on the issue; some Sudanese officials have reportedly warned that the safety of UNAMID and humanitarian workers may be threatened should an arrest warrant be granted.

On 24 July, following the AU PSC decision and the Arab League initiative, South Africa and Libya separately proposed that any draft resolution renewing UNAMID should include a paragraph mandating the suspension of ICC proceedings. (The draft resolution, prepared by the UK, has been in negotiation since 17 July. Discussions had so far revealed some differences of view among members in particular on those sections relating to justice and accountability, a referral to resolution 1591 (which imposed sanctions) and steps needed to facilitate UNAMID's deployment.)

Key Issues

The key issue for Council members is the proposal to suspend ICC proceedings. Some are concerned that the ICC developments may lead to aggressive actions by the Sudanese government—particularly renewed military action in Darfur, cessation of cooperation with UNAMID, and attacks on humanitarian operations. They are also concerned that this may negatively impact implementation of the CPA.

Another issue is whether rejecting the South African and Libyan proposals would affect the willingness of others to agree to a renewal of the UNAMID mandate at all.

Also, depending on how discussions evolve in the next few days, important procedural issues may also emerge, such as perhaps the formal introduction of amendments.

For those members that oppose the Article 16 suspension, an issue is whether to reject the proposal entirely, or how far to go in considering a compromise under which tough concessions with clear benchmarks would be expected from Sudan regarding UNAMID, humanitarian assistance, cooperation with the ICC, peace negotiations and a ceasefire (these last aspects could require similar pressure over the rebels).

It seems that any compromise on the ICC question would need to take into consideration a number of issues, including:

- preserving the integrity and independence of the ICC and avoiding impunity;
- securing substantial cooperation—without loopholes—from Sudan on UNAMID and humanitarian assistance;
- improving the prospects for a meaningful ceasefire and peace process in Darfur; and
- safeguarding overall stability in Sudan.

Bearing in mind lessons from the past, another issue is likely to be whether any compromise involving Sudan's cooperation could be sufficiently watertight as to have a chance of bearing fruit and how to avoid simplistic and ambiguous formulations that would not solve but rather only prolong existing problems.

Options

The first—and perhaps most likely—option for the Council is renewing UNAMID and leaving the Article 16 issue pending the ICC judges' consideration of the warrant request. This option carries the advantage of securing the mission's renewal—particularly at a time when it faces considerable challenges—and avoiding complex connections between UNAMID and justice and accountability issues, which would be extremely difficult to negotiate effectively in the short time that is currently available.

This may prolong uncertainty on the ICC issue. But one important aspect is that it is possible that the Court may decide that there are no grounds for an arrest warrant, or that it may defer consideration of the issue to a later stage.

A second option is to adopt a resolution renewing UNAMID, but including language with a specific timeframe for Council consideration of the ICC issue.

A third option is to adopt a simple renewal resolution for 12 months without any additional language. This could limit the scope for any abstentions, but it may also mean that important messages in support of the need for better humanitarian conditions and cooperation with UNAMID's deployment would not be included.

A fourth option is to adopt a short rollover. This would allow more time for Council discussions on the issue. However, the risk is that the mission's renewal becomes linked to future compromise on the ICC suspension issue and history shows that this approach often leads to a succession of short rollovers that are extremely damaging to the mission. Short rollovers create huge bureaucratic problems for the mission, since all of its contracts (including personnel and services) would need to be renewed for short periods and the supply of external services (including important engineering, transport and logistics work) are disrupted.

A fifth option is to decide on a compromise now under which the Council would suspend ICC proceedings and Sudan would accept in return binding concessions of the kind described above. This option seems unlikely at this point, given that the issue is sensitive and complex and would require extensive negotiations.

It should be noted that the language in Article 16 appears to open the possibility that any suspension could be specifically limited to President Bashir and not necessarily the entire Darfur situation.

However, should members fail to reach any agreement, one option is that the sponsors of the draft resolution renewing UNAMID will put the current version to a vote.

This scenario carries the risk that some members could abstain on UNAMID's renewal, which could send problematic political signals in terms of Council support for the mission.

Those members may also consider introducing a formal amendment to the draft resolution at the formal meeting in which the draft is to be adopted. (If multiple amendments are proposed, they will be voted in order starting with the "furthest removed in substance from the original proposal", according to the Council's Provisional Rules of Procedure.) A vote on an amendment has the same rules as those for any substantive matter before the Council, i.e. it requires a majority of 9 members plus no negative votes from any permanent members.

Another option would be to move to adjourn the meeting for consultations until a compromise is found. This has procedural precedence over the voting of an amendment or a resolution. The sponsors of a draft may then include oral revisions, which do not require a vote, reflecting any compromises reached.

Council and Wider Dynamics

Traditional divisions within the Council and the wider UN membership on justice and accountability re-emerged with the recent ICC developments. There are strong differences of view as to which options would best serve the interests of peace, security and justice.

Some have strongly supported the Sudanese position on the grounds that an arrest warrant may put Sudan's stability at risk and frustrate the prospects of peace negotiations in Darfur. Those members sometimes tend to express concern about international involvement in justice and accountability issues in general.

This position has been expressed through initiatives within the AU PSC and the Arab League. But the latter appears to have preferred a more cautious approach, working on a compromise that ensures some accountability before the suspension option was publicly sought. And some member states, while sympathetic to Khartoum's position, also seem concerned with the continuing deterioration in Darfur, international pressure and mounting evidence of widespread abuses.

Other member states are concerned with safeguarding the Court's independence and seem opposed to Council interference in ICC proceedings. Those members, however, are also concerned about the implications that a possible arrest warrant may have for

stability in Darfur and the rest of Sudan, as well as for the safety of UNAMID, humanitarian workers and the civilian population in general.

Within the Council, China, Russia, South Africa, Libya, and Burkina Faso are supportive of a suspension of ICC proceedings and have pressed for linking the issue to UNAMID's renewal.

Other members—such as UK, France, Belgium, Italy, Croatia, Costa Rica and Panama—seem opposed. It also seems that the US may be supportive of this position. Those members are concerned about holding UNAMID's renewal hostage to the ICC issue.

Some observers have suggested that the ICC developments provide a new element with which to pressure Khartoum to make meaningful concessions.

But there seems to be wide acknowledgment within the Council that there is not sufficient time to work out any compromises on the ICC issue at this stage, and that delaying a decision on this may be the only feasible option for now.

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.
Selected Security Council Presidential Statements
<ul style="list-style-type: none"> • S/PRST/2008/27 (16 July 2008) was a statement stating the Council's determination to take action against those responsible for the 8 July attack against UNAMID troops. • S/PRST/2008/24 (24 June 2008) was a statement on Abyei. • S/PRST/2008/21 (16 June 2008) was a statement on Sudan's cooperation with the ICC.
Latest Secretary-General's Reports
<ul style="list-style-type: none"> • S/2008/443 (7 July 2008) was the latest UNAMID report. • S/2008/267 (22 April 2008) was the latest UNMIS report.
Selected Council Meeting Records
<ul style="list-style-type: none"> • S/PV.5905 (5 June 2008) was the most recent briefing by ICC Chief Prosecutor Luis Moreno-Ocampo.
Other
<ul style="list-style-type: none"> • S/2008/483 (22 July 2008) was the OIC letter. • S/2008/465 (14 July 2008) contained an AU decision signalling concern with the impact of ICC proceedings over the situation in Darfur. • SC/9391 (9 July 2008) was a press statement condemning the 8 July attack against UNAMID troops. • 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)

Joint AU-UN Chief Mediator

Djibrill Yipènè Bassolé (Burkina Faso)

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 June 2008: 7,671 troops, 160 observers, 1,835 police
- Main troop contributors: Nigeria, Rwanda, South Africa and Senegal
- Cost: 1 July 2008 - 30 June 2009: \$1.5 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 June 2008: 8,720 troops, 551 observers, and 664 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