



# Security Council

Seventy-second year

**8132**<sup>nd</sup> meeting

Tuesday, 12 December 2017, 11 a.m.

New York

*Provisional*

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*President:* Mr. Kawamura . . . . . (Japan)

*Members:*

Bolivia (Plurinational State of) . . . . .	Mr. Llorentty Solíz
China . . . . .	Mr. Li Yongsheng
Egypt . . . . .	Mr. Aboulatta
Ethiopia . . . . .	Mr. Alemu
France . . . . .	Mrs. Gueguen
Italy . . . . .	Mr. Cardi
Kazakhstan . . . . .	Mr. Sadykov
Russian Federation . . . . .	Mr. Zagaynov
Senegal . . . . .	Mr. Seck
Sweden . . . . .	Ms. Schoulgin Nyoni
Ukraine . . . . .	Mr. Yelchenko
United Kingdom of Great Britain and Northern Ireland . .	Mrs. Dickson
United States of America . . . . .	Ms. Sison
Uruguay . . . . .	Mr. Bermúdez Álvarez

## Agenda

Reports of the Secretary-General on the Sudan and South Sudan

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*The meeting was called to order at 11.05 a.m.*

### **Adoption of the agenda**

*The agenda was adopted.*

### **Reports of the Secretary-General on the Sudan and South Sudan**

**The President:** In accordance with rule 37 of the Council's provisional rules of procedure, I invite the representative of the Sudan to participate in this meeting.

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

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

I give the floor to Prosecutor Bensouda.

**Ms. Bensouda:** Allow me at the outset to congratulate Japan on assuming the presidency of this organ for the month of December, and to acknowledge publicly the notable support your country, Sir, has provided to my Office, and the International Criminal Court (ICC) more generally, as an active and committed State party.

Today, I provide the Council with my twenty-sixth report on the situation in Darfur pursuant to resolution 1593 (2005). In the Darfur situation, effecting warrants of arrest remains a difficult challenge and a crucial area where greater collaboration is sorely needed. The entire judicial machinery of the Court can be frustrated and held in abeyance unless persons sought by the ICC appear before it. Similarly, States party reception of suspects the Court seeks to arrest cannot become business as usual, not least out of respect for the suffering of victims and their yearning for accountability, and in the interest of greater enforcement of international justice.

I regret to note that over the years my reports have highlighted the consistent failure of the Council to act when a number of States parties to the Rome Statute have welcomed Mr. Omar Al-Bashir as an ICC suspect to their territories. These States parties have failed to comply with the Court's requests for his arrest and surrender, despite a clear treaty obligation to do so. In most cases, a lack of legal clarity has been claimed to justify the failure to arrest and surrender Mr. Al-Bashir.

As the Court's legal jurisprudence, including recent judicial pronouncements, have reaffirmed, there is no legal lacuna or ambiguity concerning States parties' obligation to arrest and surrender ICC suspects to the Court's custody when they travel to their territories. My Office has been of the firm and consistent view that such failures to apprehend Mr. Al-Bashir are not only a flagrant violation of the Rome Statute but equally undermine the Council's own reputation and are an affront to the respect owed to its resolutions. I have thus repeatedly urged the Council to employ its powers as a tangible demonstration of its disapproval of such failures.

For those who may have entertained doubts about the legal obligations of States parties and the Republic of the Sudan to arrest and surrender Mr. Al-Bashir, all such doubts have since been dispelled following the decision of Pre-Trial Chamber II of 6 July. That decision, it is recalled, related to South Africa's failure to arrest and surrender Mr. Al-Bashir to the ICC in June 2015. The Chamber found that South Africa failed to comply with the Court's request to arrest and surrender Mr. Al-Bashir, contrary to the Rome Statute, and that this failure prevented the Court from exercising its functions and powers under the Statute. That important decision by the Chamber, which was not appealed by either party, establishes that there is no legal or factual justification for South Africa's failure to comply with its obligations under the Statute to arrest and surrender Mr. Al-Bashir to the Court.

The Chamber, through that decision, has sent a clear message that, in such circumstances, there can be no justification for States parties to fail to arrest a suspect against whom an ICC warrant of arrest has been issued, irrespective of that person's official status. It is my Office's hope that this message will be heeded and, furthermore, that the Council will do its part to enforce decisions by the Court in relation to situations that the Council itself has referred to the Court. This specific inter-institutional role is clearly envisaged by the Rome Statute and codified, as negotiated during the Rome Conference, which also saw the participation of permanent members of the Council.

Ultimately, despite its finding of non-compliance, the Chamber chose not to refer South Africa to either the Assembly of States Parties or the Council. The Chamber's decision in that regard was informed by a number of factors, in particular that South Africa was the first State party to utilize article 97 of the Statute to

consult with the Court in relation to a request for arrest and surrender. In addition, the Chamber took note of the robust domestic proceedings which concluded that South Africa acted contrary to its obligations under the Statute by not arresting and surrendering Mr. Al-Bashir to the Court. As a further factor in its decision not to refer South Africa, the Chamber noted that States parties have been referred to both the Assembly of States Parties and the Council in six instances in relation to failures to arrest and surrender Mr. Al-Bashir. Additionally, the Chamber noted that despite 24 meetings of the Council, including my biannual reports, the Council has taken no action against States parties that have failed to comply with their obligations to cooperate with the Court. That, the Chamber observed, is despite proposals from different States, including Council members, stressing the need to develop a follow-up mechanism concerning the referral of States by the Court to the Council.

These developments once again cast the spotlight on the repeated inaction of the Council in response to any of the Court's referrals of those States parties, as well as the Sudan, that have failed to arrest and surrender Mr. Al-Bashir to the Court while in their territory. That is a matter of grave concern, in particular for the victims of the crimes allegedly committed by Mr. Al-Bashir and the four other suspects in the Darfur situation. Furthermore, this costly inaction has the potential to undermine the fight against impunity, the effect of which is to lower the bar of accountability that many have fought to raise. This continuous nonfeasance only serves to embolden others to invite Mr. Al-Bashir to their territory, safe in the knowledge that there will be no consequences from the Council for such breaches.

Continuing on the issue of non-cooperation, just yesterday, Pre-Trial Chamber II of the Court found that the Hashemite Kingdom of Jordan failed to comply with its obligations under the Statute by not executing the Court's request to arrest and surrender Mr. Al-Bashir to the Court when he was in Jordanian territory in late March. The Chamber found, by majority, that because the rights and obligations provided for in the Statute are applicable to the Sudan, the immunities of Mr. Al-Bashir as Head of State under customary international law do not bar States parties from executing a request for his arrest and surrender. The Chamber decided that Jordan's non-compliance should be referred to the Assembly of States Parties and the Council. The Chamber noted, in particular, that at the time of Mr. Al-Bashir's presence in Jordan in March, the Chamber had already expressed in

unequivocal terms that South Africa, also a State party, had in similar circumstances, the obligation to arrest and surrender Mr. Al-Bashir and that consultations pursuant to article 97 of the Statute did not suspend this obligation.

In short, since my last report to the Council (see S/PV.7963), Mr. Al-Bashir has travelled to a number of countries, some of which are States parties and all of which are members of the United Nations. In that regard, in relation to other States parties, most recently, the Republic of Uganda, despite having been referred to the Council in July 2016 for its failure to arrest and surrender Mr. Al-Bashir to the Court while he was in Ugandan territory in May 2016, once again invited and hosted Mr. Al-Bashir during the week of 13 November. As per protocol, in advance of the visit, the Registry once again reminded Uganda of its obligation under the Rome Statute to arrest and surrender Mr. Al-Bashir to the Court. To date, there has been no response from Uganda. It is my understanding that due to the efforts of civil society, in particular the Uganda Victims' Foundation, an application was filed at the International Crimes Division of the High Court of Uganda requesting, among other things, a warrant of arrest to be issued and executed against Mr. Al-Bashir. The Ugandan court declined to issue that warrant of arrest, in part, according to reports, due to the fact that Uganda is currently awaiting sanctions from the Council for its previous failure to arrest and surrender Mr. Al-Bashir on his visit in May 2016. That latest development emphasizes the importance and consequences of the Council's inaction on non-compliance referrals by Pre-Trial Chambers of the ICC in respect of Uganda and other States that failed to arrest and surrender Mr. Al-Bashir.

Like Uganda, the Republic of Chad was previously been referred to the Council for its failure to arrest and surrender Mr. Al-Bashir to the ICC while he was on Chadian territory. The two prior referrals are dated 13 December 2011 and 26 March 2013. It is with regret that I note that public records show that Chad again hosted Mr. Al-Bashir on an official visit during the first week of December.

In relation to Mr. Al-Bashir's travel to non-States parties, I note his official travel to the Russian Federation, which is a permanent member of the Council, during the week of 20 November.

Taken altogether, those events underscore the detrimental impact on the Court's reputation and credibility in the eyes of victims, who have pinned so much hope in the Court to deliver justice for their suffering. I once again urge the Council to act on the sensible, moderate and entirely actionable proposal placed before it by New Zealand and other States. Concerted and uniform efforts should be made to discuss the Court's referrals of non-compliance by States parties to the Council, with the aim of exploring the options available to compel the States concerned to comply with their statutory obligations. That will encourage States to render cooperation to the Court for the arrest and surrender of the Darfur suspects and dissuade other States from breaching the cooperation provisions of the Rome Statute.

I welcome the declarations made on behalf of the European Union (EU) in relation to Mr. Al-Bashir's recent visits to Uganda and Russia. In particular, I welcome the call of the European Union to all States Members of the United Nations to abide by and implement the resolutions adopted by the Council under Chapter VII of the Charter of the United Nations, notably resolution 1593 (2005). In relation to Uganda, the EU also urged it to honour its obligations as a State party to the ICC. I note with appreciation the expressions of support for the ICC that were provided in those declarations.

While cooperation has been a significant challenge in the Darfur situation, I also acknowledge with gratitude the support and cooperation that my Office has received, and continues to receive, from other States parties. That support has been crucial in obtaining additional information and evidence. Without such cooperation, the effective discharge of the Court's mandate can be undermined.

I also note that the Sudan continues to adopt an antagonistic posture towards the ICC and refuses to cooperate with the Court. I invite the Sudan to rethink that position. My Office stands ready to constructively engage the Sudan on the issue of surrendering any or all of the Darfur suspects to the Court.

As in the past, I again take this opportunity to recall that Mr. Al-Bashir and the other suspects in the Darfur situation are alleged to have committed serious crimes under the Rome Statute against the people of Darfur, including murder, torture and persecution. My Office will continue to independently and impartially

investigate those allegations. Let me once again stress that Mr. Al-Bashir and all other suspects from the situation in Darfur are presumed innocent until they are proven guilty, and the burden of proving their guilt rests with my Office.

Allow me to also recall that the Council recently adopted resolution 2363 (2017), which extended the mandate of the African Union-United Nations Hybrid Operation in Darfur. In that resolution, the Council called on all parties to comply with their obligations under international humanitarian law, while stressing the importance that the Council attaches to ending impunity, including by ensuring accountability and bringing to justice the perpetrators of crimes, including sexual and gender-based violence, that were allegedly committed by all parties in Darfur. The work of the ICC is essential for fighting impunity for the world's most serious and destabilizing crimes, as well as for ensuring accountability in Darfur. To that end, I respectfully submit that the Court ought to be actively supported by the Council and by the international community as a whole.

Notwithstanding the decrease in the scale of violence in Darfur, my Office continues to receive reports of unlawful killing of civilians, as well as of the continuing forced displacement of approximately 40,000 people due to the conflict. Moreover, while there has also been a decrease in reports of sexual and gender-based crimes, my Office notes with great concern that those crimes are reportedly continuing, particularly against young girls. Those crimes cannot be left unaddressed.

Finally, I stress that the annual operating budget of my Office is increasingly insufficient to support our ever-growing workload. I again urge the Council and the United Nations to make suitable arrangements to provide financial support towards my Office's ongoing investigative activities in Darfur, as envisaged by the Rome Statute.

To conclude, I thank you, Mr President, as well as the Council and all those who are following the proceedings before the Council, within the Chamber or through video-link, for their concern and attention to the important issues that are the focus of today's discussions. In sum, concrete follow-up action by the Council on matters relating to outstanding ICC arrest warrants will demonstrate the commitment of the Council, as a pillar of the United Nations system, to

peace and security in Darfur through the vector of international criminal justice. Accountability for crimes under the Rome Statute is a necessary complement to sustainable peace and stability in Darfur. As such, I call on the Council to prioritize action on the outstanding warrants of arrest that have been issued by the Court.

To the victims of Rome Statute crimes allegedly committed in Darfur, I pledge to them that my Office and I will continue our efforts to bring those responsible for such crimes to justice. Notwithstanding the challenges that we face, our resolve is unshakable. I hope that there will be solace in knowing that, as the history of international criminal justice has often demonstrated in practice, time is not on the side of perpetrators. Rather, it is on the side of the victims and the cause of justice.

**The President:** I thank Prosecutor Bensouda for her briefing.

I shall now give the floor to the members of the Security Council.

**Mrs. Dickson** (United Kingdom): I would like to thank the Prosecutor for her twenty-sixth report on the situation in Darfur, for the unwavering commitment that she and her staff have shown for the investigation and for her briefing to the Security Council today.

The International Criminal Court (ICC) has an important role to play in global efforts to end impunity for the most serious crimes of international concern. The United Kingdom fully supports its efforts to hold perpetrators to account and achieve justice for victims.

The United Kingdom welcomes the reduction of armed conflict between Government forces and the armed opposition, as well as the extension of unilateral cessations of hostilities by both sides to the conflict. We are also encouraged by the improvements in humanitarian access and the operational environment. While the situation in Darfur is beginning to show signs for cautious optimism, the international community would be remiss to accept the narrative that the situation has normalized. As noted in the Prosecutor's report, the security and human rights situation remains volatile and unpredictable, particularly for Darfur's 2.1 million internally displaced persons. Also of particular concern is the continued use of sexual violence in conflict, although it is noted that reported incident purportedly declined during this reporting period.

It has been said many times before in this Chamber that lasting peace in Darfur can be realized only

with the agreement of a permanent ceasefire and an inclusive political settlement that addresses the root causes of conflict. Disarmament, demobilization and reintegration (DDR) will be vital in this regard. We note the Government's ongoing disarmament campaign but are concerned by tensions and armed confrontations that have emerged as a result and that threaten to undermine the recent improvements in the security situation. We therefore urge the Government of the Sudan to pursue balanced DDR and security sector reform with full respect for human rights and international humanitarian law and in close cooperation with the African Union-United Nations Hybrid Operation in Darfur (UNAMID).

With regard to the currently stalled peace process, we urge all parties to capitalize on the recent security and humanitarian improvements by refocusing their efforts on implementing the African Union High-Level Implementation Panel road map.

The United Kingdom welcomes the progress that UNAMID has made in completing the first phase of its reconfiguration and the Government of the Sudan's improved cooperation with the Mission. However, it is regrettable that the Government of the Sudan has yet formally to agree to the opening of a temporary UNAMID base in Golo, Jebel Marra. Such a base would be vital to ensuring that a smaller UNAMID is able to focus its efforts on the Jebel Marra area, including supporting the provision of humanitarian assistance in that high-need area. We therefore urge the Government of the Sudan to agree formally to the opening of the base without further delay.

As UNAMID reconfiguration continues, it is crucial that the Mission and the Security Council closely monitor the impact of the reconfiguration on the situation on the ground, as well as the cooperation afforded to the Mission by the Government of the Sudan. The United Kingdom therefore requests other Council members to engage constructively in the upcoming assessment of phase 1 of the reconfiguration and consider carefully whether phase 2 remains appropriate.

In adopting resolution 1593 (2005), the Security Council committed to supporting the Office of the Prosecutor in its efforts to investigate the situation in Darfur. In the 26 reports that have followed since, the Prosecutor has consistently reminded us of the need for State cooperation and the Council's support in order to make progress in the investigation. In that regard,

we must do better. We encourage our fellow Council members to consider carefully what more we as a Council can do to ensure that the Court receives the necessary support. The United Kingdom will continue to call on the Government of the Sudan to meet its obligations under resolution 1593 (2005) and to cooperate fully with the Court to execute outstanding arrest warrants and to fulfil its international obligations.

The United Kingdom continues to be frustrated that fugitives of Court, including Mr. Al-Bashir, Mr. Harun and Mr. Hussein, are still traveling to certain countries unhindered. We note the Chamber's finding on 6 July that, vis-à-vis the Court, the Sudan cannot claim the immunity of Mr. Al-Bashir as Head of State in the context of a request to arrest and surrender him to the Court. For our part, the United Kingdom will continue to raise our concerns with the relevant Governments, including through the European Union, as noted in the Prosecutor's report.

We renew our call on all States parties to cooperate with the Court and abide by their obligations under the Rome Statute. We also urge them to consult the Court if they feel that they are unable to cooperate with it for any reason.

We welcome and express our gratitude for the continued efforts of the Office of the Prosecutor to achieve justice for victims in Darfur despite the fragile security situation, access restrictions and lack of cooperation. The United Kingdom also appreciated the efforts to the Prosecutor's Office has put into making the most effective and efficient use of the resources that has available while recognizing the lack of resources does impact on these investigations.

Finally, I should like to take this opportunity to reaffirm the United Kingdom's commitment to supporting the Court, both as a State party to the Rome Statute and as a member of the Security Council. We thank the Prosecutor again for her report.

**Mr. Alemu** (Ethiopia): We thank Prosecutor Fatou Bensouda for her briefing and for the efforts she has made under difficult circumstances. Notwithstanding the following remarks, we maintain very high respect for her.

Ethiopia's position on the issue of the Sudan in the International Criminal Court (ICC) reflects that of the African Union, which has repeatedly called for the suspension of proceedings against President Omar

Al-Bashir of the Sudan and urged the Security Council to withdraw its referral of the case concerning the matter. We have always thought, together with African Union, that the case is so weak that its continuation makes no sense at all. No more evidence is required to validate this point of view than the report of the Prosecutor. The spectrum of countries in non-compliance is a call for change.

As ever more information emerges and the fog enveloping the issue lifts, the case is losing any leg it may have had to stand on. Frankly, it is almost becoming an embarrassment, with the ICC, under what seems like marching orders from the Security Council, chasing an African Head of State in what appears to many to be a charade or the fight against impunity gone haywire. This will only damage the credibility of the Council, since what to many looks like a lack of seriousness concerning the matter is inconsistent with the immense responsibility for the maintenance of international peace and security incumbent on the Council. This is becoming even more manifest as recent events have accentuated the need for the Council to seriously reexamine its position on the matter.

The fact that the Sudan has been playing a constructive role in fighting terrorism, combating human trafficking and illegal migration, and dealing with other regional peace and security issues is now widely recognized. It has enhanced its bilateral and multilateral cooperation and engagement on all these issues, with enormous positive implications for the respect of human rights and for peace and security, which we believe are intertwined with development. The lifting of the bilateral economic sanctions imposed on the Sudan by the United States for the past two decades is a major positive development resulting from the Sudan's enhanced International engagement.

Fairly or not, the Security Council is often criticized for underperformance. On this matter, it has been hyperactive, at the cost of its credibility.

President Omar Hassan Al-Bashir has demonstrated the necessary political leadership and commitment to resolve the Darfur issue as well as in addressing outstanding issues with South Sudan. As we have said for some time and as acknowledged by various reports of the Secretary-General, the situation in Darfur continues to show marked progress. The hostilities between the Government of the Sudan and rebel forces have decreased substantially and the security situation

on the ground has improved significantly. The Darfur peace process, led by the African Union High-Level Implementation Panel and supported by African Union-United Nations Hybrid Operation in Darfur, has also achieved some progress, despite the fact that the lack of constructive engagement by the leaders of the remaining armed movements has been a major obstacle.

Of course, we also recognize that a lot remains to be done in addressing the root causes of conflict in Darfur and ensuring long-term stability. It is for this reason that we call on the Government to redouble its efforts to implement all remaining tasks. The international community should also live up to its commitments; the Council in particular should exert pressure on the armed movements to negotiate seriously in order to end the suffering of the people of Darfur.

As I conclude, I must stress that, in light of the positive developments I have highlighted and the constructive role of the Sudanese Government on a range of issues, it is only appropriate that the international community changed its approach in dealing with the Sudan. That is why we welcomed the lifting of the unilateral sanctions imposed by the United States against the Sudan. It is also high time that the Council began to seriously consider the issue of the Sudan and the ICC. It is in the interest of the Council to do so, as the status quo does not serve to enhance its credibility.

**Mrs. Gueguen** (France) (*spoke in French*): I thank Prosecutor Bensouda for her report and her detailed briefing to the Council, and reiterate France's full support and trust in the fulfilment of her mandate.

On 31 March 2005, the Council adopted resolution 1593 (2005). This decision had three clear goals: first, to promote the fight against impunity; secondly, to prevent new atrocities in Darfur; and thirdly, to foster reconciliation and stability in the Sudan. More than 12 years later, unfortunately, we note yet again that these goals have not been achieved and that impunity prevails.

Only prosecutions will put an end to this situation, and it is only with the cooperation of States that it will be possible to successfully conduct such judicial procedures. That is why France calls on all States concerned — and, of course, the Sudan — to implement the arrest warrants issued by the International Criminal Court (ICC) and to respect the remainder of their obligations under resolution 1593 (2005).

It is the Council's responsibility to act resolutely in the fight against impunity, which is critical to helping end the instability that continues to blight Darfur, where civilians are the primary victims. It is true that the recent reports of the Secretary-General on the situation in Darfur have reflected certain encouraging developments on the ground, particularly a lessening of confrontations between the Government and rebel forces in Darfur, as well as an overall reduction in the level of violence. However, intercommunity conflict remains one of the main sources of violence in Darfur. The activities of militia continue to threaten civilian populations and many of the displaced are still too afraid to return home or even simply to venture outside the camps. The proliferation of weapons continues to contribute to such activities and sexual exploitation and grave human rights violations persist.

In light of the situation outlined by the Prosecutor, the protection of civilians can be assured only if these encouraging developments are consolidated, entrenched and maintained over time. To that end, it is essential that the Sudanese authorities allow the African Union-United Nations Hybrid Operation in Darfur (UNAMID) to fulfil its mandate in accordance with the decisions of the Council and of the Peace and Security Council of the African Union. That would require, *inter alia*, facilitating access to all areas mandated for UNAMID intervention. It also requires facilitating the implementation of the Mission's reconfiguration pursuant to resolution 2363 (2017), particularly through the establishment of the base in Golo.

Let us not forget that today 2.1 million of Darfur's inhabitants are still displaced — almost a third of the region's population. Encouraging their return requires us to put an end to all forms of violence and to address the deep-rooted causes of the conflict. In order to break the spiral of violence, those responsible must be held to account. That is why now, as in the past, we must not allow our attention to this issue to wander. The perpetrators of the crimes must be prosecuted and brought to justice. We owe that to the victims. This also serves as an imperative for the future.

France once again recalls the importance of the obligation to cooperate with the Court in accordance with resolutions adopted by the Council. That applies not only to the implementation of the arrest warrant issued against Mr. Al-Bashir but also with regard to the other four suspects identified by the Court. France refuses to allow this refusal of States Members of

the United Nations to cooperate to become the norm, especially if they are States parties.

Of course, this obligation falls primarily upon the Sudan, which must implement the arrest warrants against its nationals for crimes committed on its territory and cooperate with the Court, pursuant to resolution 1593 (2005). States parties to the Rome Statute have a special role to play with regard to their statutory obligation to cooperate with the Court and to implement arrest warrants when suspects are found within State territory. In this connection, France regrets that this has not been the case, particularly with regard to Mr. Al-Bashir.

The Council's responsibility is clearer than ever. We must respond to the legitimate demands of the Court so that it can fully accomplish its mandate. We must make cooperation with the ICC effective and ensure that arrest warrants are implemented. The same goes for the Council's implementation of its own resolutions, especially resolution 1593 (2005). In that regard, France remains determined to consider the Council's modalities of action based on the proposals made by the New Zealand delegation in December 2016.

In that spirit, France reiterates its proposal that States deemed by the Court to have breached their obligation to cooperate be invited to address the Council and that, on the basis of such an exchange, the Council then determine the next steps to be taken.

**Ms. Schoulgin Nyoni** (Sweden): I would like to join others in welcoming Prosecutor Fatou Bensouda back to the Security Council. I thank her for her comprehensive briefing and report, as well as for her Office's continued work in the fight against impunity. Let me once again reiterate our strong support for the efforts of the Office of the Prosecutor, whose call for the full backing of the Security Council and all Member States must be heeded.

The challenges that the Office of the Prosecutor faces in relation to the Darfur situation and the support needed to overcome them are known to all of us. It is time for action to resolve them. Ultimately, it is the survivors and victims in Darfur who pay the highest price when justice and accountability are not ensured. It is vital that the Security Council follow through on its decisions so that neither the Council's authority nor the functioning of the Court is undermined. We share the Prosecutor's view that the success of the referral of the Darfur situation to the Office of the Prosecutor

continues to depend heavily upon the cooperation of States, in particular States parties to the Rome Statute and members of the Council.

Sweden is yet again disappointed that there have been few developments since the last briefing (S/PV.7963) that would allow the International Criminal Court (ICC) to pursue its investigations further. All suspects remain at large. We reiterate our call on the Government of the Sudan to cooperate fully with the ICC, in accordance with resolution 1593 (2005), and to fulfil its obligations to arrest and surrender individuals subject to arrest warrants. Further steps are also needed on the part of the Government of the Sudan to ensure justice for the women, men and children who suffered horrendous crimes during the conflict in Darfur.

It is a matter of concern that President Al-Bashir has been able to continue to travel internationally, including to States parties to the Rome Statute. We are also deeply concerned about the ability of other suspects in the Darfur situation, including Mr. Hussein and Mr. Harun, to travel. We echo the declaration issued on 14 November by the European Union and its member States, which expressed regret regarding President Al-Bashir's recent visit to Uganda, a State party to the Rome Statute. We also note yesterday's finding of the Pre-Trial Chamber of the Court regarding Jordan. We urge States parties and other Member States to cooperate fully with the Court and to arrest and surrender suspects. As stipulated in the Rome Statute and, as the Court has concluded, the official capacity of a person shall not bar the Court from exercising its jurisdiction over such a person.

Like others, we continue to raise the issue of non-cooperation with the relevant Governments. In order for the ICC to fulfil its important mandate, and without its own enforcement mechanism, the Court relies on the cooperation of States, including for the implementation of arrest warrants. As we said when we last met on this item, the Council should approach cases of non-cooperation in a structured manner and — as a minimum — discuss which tools it has, if any, for an appropriate response.

Sweden recognizes the ongoing debate on the ICC among African countries. The ICC was not set up to be a court for Africa. The Rome Statute for the ICC is based upon global values and needs more States parties, not fewer. We stand ready to listen to the concerns of States parties and discuss the challenges

experienced in their relations with the ICC. In that regard, as the Prosecutor has said, we urge any State party that identifies a challenge precluding it from fully cooperating with the ICC under the Statute to consult with the Court in a timely manner so as to resolve the matter. We also believe that the Council should stand ready to meet with the Open-ended Ministerial Committee of Ministers for Foreign Affairs on the ICC, established by the African Union.

We note in the report that the number of reported cases of rape in Darfur has declined, but the issue of sexual and gender-based violence remains a serious problem. A holistic approach for sustaining peace and addressing the root causes of instability, including building effective rule-of-law institutions, is essential as we address remaining challenges. Impunity and the lack of accountability for violations of international humanitarian law and violations and abuses of international human rights law can never be accepted. We must give the Court all our support as it carries out its important work.

**Mr. Seck** (Senegal) (*spoke in French*): The Senegalese delegation welcomes the convening of this briefing by the Japanese presidency, and thanks Ms. Bensouda, Prosecutor of the International Criminal Court, for very clearly presenting her report on the state of the investigations and proceedings of her Office with regard to the Darfur issue, pursuant to resolution 1593 (2005). Senegal once again pledges its full support for Ms. Bensouda.

Committed to respect for the universality of human rights and the fight against impunity for serious crimes committed against victims throughout the world, in particular in Africa, and aware of the role played by the International Criminal Court in that fight, Senegal continues to follow closely the work of the Court with regard to allegations of human rights violations, including sexual and gender-based violence committed in conflict zones in the Sudan, especially in Darfur.

No peace can be built on the vestiges of impunity or failure to hold perpetrators responsible. Accountability should never be ignored as the thirst for justice for victims demands unflinching commitment on the part of every one of us. Accordingly, we encourage the Sudanese Government to provide a rapid response to allegations of human rights violations and ensure that those responsible for alleged crimes are held accountable for their actions. Subscribing to the principles of

accountability and justice, my country — like the African Union, which calls for re-establishing peace and justice in Darfur — continues to believe that dialogue and reconciliation are essential steps towards bringing about comprehensive and definitive peace and finding a lasting solution to the acute issue of refugees and displaced persons in that area of Sudan.

Approximately one-third of Darfur's population are refugees. Senegal therefore once again calls on the international community to support the peace initiative under way, in particular the Doha peace process, whose implementation remains slow. It is also important to support the activities of the African Union High-level Implementation Panel, which continues its tireless work to restore peace in Darfur. Moreover, my delegation welcomes the outstanding work being carried out not only by the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and its staff, as well as the country team, but also partnering humanitarian entities working towards achieving peace in Darfur. We stress the need to strengthen the effectiveness of UNAMID in its support for peacebuilding and stabilization.

With regard to the crucial role played by the Court, it is regrettable that the work of the Office of the Prosecutor continues to be constrained by an extremely limited budget, thereby limiting its investigative and prosecutorial activities. The Prosecutor must have the necessary means at her disposal to be able to fulfil her mandate, which, we recall, includes providing justice to victims of serious crimes throughout the world, including in Darfur. The Assembly of States Parties to the Rome Statute of the International Criminal Court, of which we are a member, must continue to consider ways and means to provide the Office of the Prosecutor the financial support that it requires.

In the Senegalese delegation's view, equally regrettable is the passivity of the Security Council in addressing the repeated calls of the Office of the Prosecutor, as it has been 13 years since the Office began providing biannual reports to Council — amounting to 26 reports as of today. However, thus far the Council has not provided it with a single strategic recommendation. Fortunately, the Office of the Prosecutor benefits from the cooperation and support of a number of States and organizations, but we encourage all interested parties to demonstrate the same spirit of openness by cooperating fully with the Office in the purview of its activities.

I reiterate that, firmly committed as it is to the principles of accountability and justice, my country continues to believe that establishing the security and political conditions conducive to dialogue will allow all stakeholders to find a solution that meets requirements to bring about peace and justice for Darfur. Achieving lasting peace in that destabilized part of the Sudan, which is a large country, most certainly involves a challenging but necessary endeavour.

In conclusion, in Senegal's view, the compromise proposal introduced by New Zealand — given the reduction in the level of violence observed in Darfur, as well as the lifting of certain unilateral sanctions imposed on the Sudan — provides the Security Council with an opportunity to improve the situation that prevailed when we adopted resolution 1593 (2005) 12 years ago.

**Mr. Sadykov** (Kazakhstan): Our delegation thanks the Prosecutor of the International Criminal Court, Ms. Bensouda, for her briefing.

We took note of the twenty-sixth report of the Office of the Prosecutor on the Court's recent work in implementing resolution 1593 (2005) on Darfur. Kazakhstan is pleased with the continued progress made with regard to the security and humanitarian situation in the Darfur area. We welcome the efforts of the Government of the Sudan to ensure humanitarian access to all areas in Darfur, as well as its close cooperation with the United Nations and the African Union. The trend of decreasing incidents involving intercommunal clashes is commendable, and the Government of the Sudan should continue its work in that area so as to further avoid all tensions. Khartoum's commitment to stability in Darfur has resulted in the lifting of economic sanctions imposed by the United States in 1997.

We encourage the Government of the Sudan to make all necessary efforts to maintain that positive momentum and to strengthen its cooperation with the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and the United Nations country team so as to achieve peace and prosperity for the entire Sudanese population. We also call on the Government to ensure dignified and durable solutions for the more than 2 million internally displaced persons in Darfur, a number that has remained unchanged since the previous report of the International Criminal Court (see S/PV.7963).

Kazakhstan is confident that inclusive dialogue, in accordance with the Doha Document for Peace in Darfur, is the only way to establish peace and stability in Darfur. We also commend the efforts of the African Union High-level Implementation Panel and UNAMID to accommodate non-signatories to the Doha Document in the political process. At the same time, it is necessary to respect the Government's ownership of the political process, as well as the sovereignty and independence of the Sudan, which are all crucial elements for long-term peace and reconciliation in Darfur. The international community should therefore avoid any measures that could affect the achievement of these objectives. We should rather support the Sudan's capacity to restore and promote the rule of law, address impunity, protect human rights and abide by the principles of international law.

Finally, we underscore the significant role of the African Union and other regional organizations, as well as neighbouring countries, in resolving the crisis in Darfur. We therefore recommend that the united position of the African Union be taken into consideration and that we work to lay the foundation for a stable Sudan.

**Mr. Zagaynov** (Russian Federation) (*spoke in Russian*): We have familiarized ourselves with the twenty-sixth report of the Prosecutor of the International Criminal Court (ICC) on the situation in Darfur and would like to begin by addressing some of the facts and figures in the report. In particular, it notes a continued reduction in armed clashes between the Government of the Sudan and rebel forces. In actual fact, it appears that if there were any clashes at all, they took place only at the very beginning of the reporting period, during the first half of June. As the August report (S/2017/746) of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur (UNAMID) underscores, they were residual. We therefore believe that it might behoove the Prosecutor to reflect that trend more accurately.

Regrettably, there is no mention in the report of the measures taken by Khartoum to implement the Doha Document for Peace in Darfur, to which there is still no alternative, or of the beginning steps to implement the decisions of the National Dialogue Conference of October 2016. Another positive was the recent extension by the Government and the movements that are non-signatories to the Doha Document of their obligations under the ceasefire.

With regard to cooperation between Khartoum and the international community, we should note the progress in the Government's efforts to solve the obstacles that have been hindering UNAMID, including the granting of visas and customs clearance for contingent-owned equipment, while flight authorizations are now also in good shape. The Sudanese forces have been working constructively with the mission to protect its equipment and personnel. There is also clear progress in the provision of humanitarian access, where the new directives and procedures for humanitarian assistance and the transfer of humanitarian personnel are proving effective. We welcome the measures taken by the Government of the Sudan to facilitate access for humanitarian assistance to South Sudan. The authors of the report clearly thought these facts were not worth mentioning, despite the fact that the report is stuffed with selective references to resolution 2363 (2017), on the extension of the UNAMID mandate.

I would now like to consider the Prosecutor's activities in the context of criminal justice procedure. Going on the report, there have been no developments in the Sudanese dossier for the past six months. As in other cases, the Court has nothing to brag about as far as making progress in the genuine fight against impunity is concerned, an objective that our delegation shares, needless to say. Instead of conducting an objective, independent investigation of the crimes allegedly committed by all parties to the conflict, the Prosecutor continues to exaggerate the issue of immunity for senior Sudanese officials. It would appear that the main aim is to attempt to justify the absence of immunity for the President of the Sudan. As the report emphasizes, the States that he has visited, including those that are party to the Rome Statute, have no intention of going along with the ICC's thinking and interpretation with regard to questions of immunity. The African Union's position on the issue is also well known.

For our part, we reiterate that resolution 1593 (2005) does not render invalid the norms of international law on immunity for senior officials of States that are not party to the Rome Statute. They still apply, and no decisions by the ICC can change that. Any reference in the Prosecutor's report to the recent visit of the President of the Sudan to our country is completely inappropriate. The issue does not come within her purview. We have no intention of accounting for our bilateral contacts with the Government of the Sudan to anyone, especially since resolution 1593 (2005) does

not apply that obligation to States that are not party to the Rome Statute, as is clearly reflected in its text.

In conclusion, I want to draw the Council's attention to the fact that the current report, like those on the situation in Libya, once again brings up the issue of the provision of resources to the ICC from the United Nations budget and follow-up action by the Security Council. Our position on those issues is well known and we will not reiterate it. We hope that such passages will stop migrating from one report of the International Criminal Court to the next.

**Mr. Cardì (Italy):** First of all, I too would like to thank Prosecutor Fatou Bensouda for the twenty-sixth report on the International Criminal Court (ICC) on the situation in Darfur, as well as for her briefing today. Above all, I would like to acknowledge her tireless and admirable efforts to maintain a focus on the situation in Darfur and on other situations around the world. The report shows not only that the Office of the Prosecutor is continuing to work on the investigations and the proceedings already under way but also that it has to follow up on the continuing alarming reports indicating that crimes continue to be committed in Darfur. In that regard, the recent visit to the Sudan of the Working Group on Children and Armed Conflict from 26 to 29 November showed that intercommunal conflict, human rights violations, including sexual and gender-based violence, impunity, a lack of accountability and attacks on internally displaced persons in Darfur still persist, despite some progress. Where the Court's investigation of this is concerned, the Council is still faced with a situation of prolonged stalemate, which is unsatisfactory and is intrinsically linked to the lack of cooperation.

I would also like to recall here, in line with the statements of the European Union, that cooperation with the Court is a crucial element of resolution 1593 (2005). It is part and parcel of full implementation of the resolution and is an obligation under the Rome Statute of the International Criminal Court. Cooperation with the Court is required in order for proceedings to take place. Resolution 1593 (2005) clearly indicates the general framework and some specific obligations. The ICC Statute further complements the resolution. Inaction in such a situation cannot be attributed to the Court. It is up to States to do more, including collectively. Of course, the Court remains a complementary mechanism. However, there must be a stronger indication of genuine willingness to engage in national prosecutions.

The priorities for investigation and prosecution are, naturally, up to the State in question, but, at the same time, the entire international community is called to action when such crimes are committed.

Since Italy is leaving the Council at the end of this year, I would like to reaffirm the position that we have outlined on previous occasions. We should do more work, and on more robust processes, to address and discuss the issues underpinning this and other situations where accountability is at stake. Clearly, the Council can ultimately decide not to decide. The absence of action by the Security Council is also a form of decision. However, we think that is detrimental to the Council's authority, and it does not make us particularly proud. But it is the result of the procedures envisaged in the Charter of the United Nations.

However, we also believe that the Council should adopt a structured mechanism that would enable more in-depth discussions prior to reaching any conclusion, including the conclusion that the Council is unwilling or unable to take any decision or suggest any measure that would enable some progress to be made. Perhaps processes and procedures cannot solve cooperation issues in themselves, but we think that they can create opportunities, including for more engagement and more dialogue with all interested States, and that they could potentially enable creative solutions to be devised. Repeating the same arguments every six months, unfortunately, does not advance things in any way. At the same time, of course, it is a necessary and appropriate reminder that the victims of crimes in Darfur still need to see justice done.

**Mr. Aboulatta** (Egypt) (*spoke in Arabic*): We have listened carefully to today's briefing of the Council by Ms. Fatou Bensouda, Prosecutor of the International Criminal Court (ICC), on her twenty-sixth report on the situation in Darfur, in accordance with Security Council resolution 1593 (2005). The report reviews a number of challenges and observations regarding the Court's performance in dealing the situation in Darfur and States' cooperation with the Court so as to enable it to implement its mandate. The report makes two main points, the first being a request for facilitating financial support through the United Nations to launch relevant investigations in Darfur, and the second regarding States' cooperation with the ICC to ensure that justice is rendered. As we thank Ms. Fatou Bensouda for her briefing before the Council today, I would like to make the following comments.

First, there is a unified African position on the way the ICC deals with some African issues. That position has been emphasized in successive resolutions adopted at African Union Summits, including resolution 547 of the twenty-fourth Summit, resolution 586 of the twenty-fifth, resolution 590 of the twenty-sixth, resolution 616 of the twenty-seventh and, more recently, resolution 622 of the twenty-eighth. Those resolutions stress that Africa is committed to fighting impunity. They call on African States to maintain their commitment to the African Union's relevant resolutions, in accordance with article 23 of its Constitutive Act.

Secondly, those resolutions stress that the International Criminal Court should respect the provisions of international law on the immunity granted to presidents and other high-level officials during their mandate.

Thirdly, our position on the ICC has not changed. We hope no steps that could thwart the security, stability and sovereignty of African States will be taken. We stress the importance of ensuring that no sanctions are imposed on any African State on the pretext that it did not take the necessary measures to execute an ICC arrest warrant, especially given that some States have reservations about the ICC and are not even party to the Rome Statute of the Court.

**Ms. Sison** (United States of America): I would like to thank Prosecutor Bensouda for her briefing. We agree with her that the victims in Darfur need justice. Since the beginning of the conflict in Darfur more than 300,000 people have been killed and 4.7 million others affected, including more than 2 million who have been and remain internally displaced. In the past, both Sudanese Government forces and their allied militias have engaged in the widespread and systematic killing, raping and torturing of civilians. Perpetrators have burned villages and blocked humanitarian aid from reaching populations in desperate need. Some rebel groups have conducted similar brutal attacks. More than 12 years ago, alarmed by the atrocities taking place in Darfur, the Council referred the situation to the International Criminal Court in order to bring to justice those responsible for such atrocities and to end the climate of impunity in the Sudan.

The United States has continued its efforts to help to end the conflict and improve conditions for the people of Darfur. That focus on the safety and the security of Darfuri citizens was a key component of the five-track

engagement plan, the framework launched in June 2016 whereby the United States Government offered to revoke certain economic sanctions on the Sudan if the Sudan made progress in a number of areas. We asked the Sudan to maintain a cessation of hostilities in areas of internal conflict such as Darfur, and to improve humanitarian access. We note that in 2017 the Government of the Sudan has refrained from military offensives, halted aerial bombardments in Darfur and taken meaningful steps to expand humanitarian access.

With the exception of one party, the armed opposition in Darfur also reciprocated by announcing its own unilateral cessation of hostilities. However, much more progress is needed. While Darfur has not experienced the same levels of violence in 2017 as in years past, lasting peace remains elusive. The human rights situation continues to be volatile. Humanitarian needs remain high and accountability non-existent. Those responsible for human rights violations and abuses and attacks on civilians should be held accountable, including security forces using excessive force against civilians, such as in Kalma camp in September, and the members of armed militias who perpetrate atrocities against civilians in Darfur. In November, we noted the Sudanese Government's arrest of the former Janjaweed commander Musa Hilal, who is subject to United Nations sanctions for his commission of atrocities in Darfur following clashes between Sudanese security forces and armed militias loyal to Hilal.

We are concerned about the reports of civilian fatalities, including the killing of women and children, occurring during those clashes. We call on the Sudanese Government to allow the United Nations, humanitarian organizations and the media to access the area where the clashes took place so that they can investigate the reports and assist those in need. We also call on the Government to investigate promptly and credibly any allegations against Hilal, in accordance with the Sudan's human rights commitments and obligations, and to hold Hilal to account if he is found to have committed atrocities. We note that the International Criminal Court has investigated allegations of atrocities committed by all sides, and has charged Sudanese Government officials, militia leaders and certain armed-opposition members with crimes, including genocide; crimes against humanity, including torture, murder and rape; and war crimes, including pillaging and deliberate attacks on peacekeepers.

We have pointed out for many years that it is unacceptable that the suspects in the Darfur situation remain at large and have not been brought to justice. In particular, we have expressed disappointment that Sudanese President Omar Al-Bashir continues to travel to countries around the world. Receiving President Al-Bashir on those visits has served only to burnish his image, diminish the seriousness of the charges against him and dismiss the tremendous suffering of the victims. We must stand with the victims, no matter how powerful those who inflict abuses on them may be. Other leaders who have targeted their own citizens, including the former President of Côte d'Ivoire Laurent Gbagbo, the former Liberian President Charles Taylor and the former Khmer Rouge leaders Nuon Chea and Khieu Samphan, have been called to answer for their alleged crimes.

We will continue to use the tools at our disposal to press the Sudan to improve its human rights practices and to promote justice for the people of Darfur. A Sudan that adheres to the rule of law, respects human rights and breaks the cycle of impunity is one that will enjoy sustainable peace and prosperity. We look forward to the day when the Sudan is a valuable contributor to regional security and stability.

Finally, I would be remiss if I did not reiterate the United States position with respect to recent developments related to the situation in Afghanistan, which is different from this situation in a number of respects. As we said in the Council in November and as we reiterated at the Assembly of States Parties meeting last week, we continue to have serious concerns about and a long-standing principled objection to any International Criminal Court investigation or other activity concerning United States personnel.

**Mr. Yelchenko (Ukraine):** We are grateful to the Prosecutor for her twenty-sixth report regarding the Darfur situation. At the outset, let me reiterate our full support for the International Criminal Court (ICC) and underscore its central role in the fight against impunity and the promotion of international justice.

As Chair of the Security Council Committee established pursuant to resolution 1591 (2005), concerning the Sudan, I am pleased to note that the overall security situation in Darfur remains stable. Consequently, civilians suffer much less from violence. At the same time, we remain concerned about the fragility of the situation and the continued

violations and abuses of human rights, which mostly remain underreported.

We note, at the same time, the report's references to extrajudicial killings, rape and sexual violence, arbitrary arrests, illegal detentions, pressure on political opponents and human rights activists, as well as unlawful restrictions on the freedom of expression, association and assembly, which continue to take place. All parties responsible for those acts should be brought to account.

Another point of concern is the fate of internally displaced persons in Darfur, who must be treated in full compliance with international human rights law and standards. Without the cooperation of States all suspects in the Darfur situation will remain at large and their status will be used as an excuse to evade the responsibility of States to fulfil their international obligations. The same goes for the Council, which is still not ready to take measures to give effect to the Court's decisions on non-cooperation. We express readiness to continue work in that regard and call on Council members to reconcile different, or even opposite, views.

We are convinced that every unimplemented decision of the Court only widens the gap between crime and accountability, thereby rewarding impunity and provoking further violations. In that regard, we call upon all States Members of the United Nations to strictly abide by and fully implement resolution 1593 (2005). That should not be regarded as a manifestation of goodwill, but as a matter of legal obligation.

We would like to emphasize once again that non-compliance with ICC decisions and requests undermines the foundations of the international criminal justice system. The consolidation of efforts to fight against impunity should prevail over any concerns that impede decisive steps towards the arrest and surrender of ICC suspects.

Finally, since this is our last statement on this subject during Ukraine's current Security Council membership, I would like to thank Prosecutor Bensouda for her dedicated efforts and express hope that her work, despite the existing challenges and limited resources, will always bring about concrete results, thereby contributing to the maintenance of international peace and security.

**Mr. Bermúdez Álvarez** (Uruguay) (*spoke in Spanish*): I would like to thank the Prosecutor of the International Criminal Court, Ms. Fatou Bensouda, for her thorough presentation of the twenty-sixth report on the activities of her Office with regard to the situation in Darfur. We believe that this type of transparent and frank report provides added value to the analysis of the issues under the Security Council's mandate.

At the outset, Uruguay wishes to express its thanks for the opportunity to reiterate its full support for the role of the International Criminal Court as an institution established to strengthen the rule of law at the international level by prosecuting those who are responsible for the most serious violations of the rights that affect humankind as a whole. In that regard, we renew our call on States Members of the United Nations that are not yet parties to the Rome Statute to accede to the Statute, which will help make this instrument universal in the fight against impunity and defend the victims of heinous crimes that constitute a serious threat to the peace and the security of all humankind.

We regret that the situation with regard to this issue remains virtually unchanged since June, when we discussed it the last time (see S/PV.7963). Having just listened to Prosecutor Bensouda, we wish to express our consternation at the lack of cooperation by States parties to the International Criminal Court and the lack of compliance with, and implementation of, the Rome Statute.

As a State party to the Rome Statute, Uruguay is concerned by all the cases of non-cooperation with the International Criminal Court. In this particular case, it is worth recalling that resolution 1593 (2005) states, in paragraph 2, that the Government of the Sudan and all other parties to the conflict in Darfur must fully cooperate with the Court and the Prosecutor, but also urges all States and regional organizations and other relevant international organizations to also cooperate fully.

There is a shared responsibility among the States that do not cooperate and the Council, which lacks effectiveness and action, in contravention with what is provided by the Rome Statute in its article 87.7. Uruguay is supportive and willing to work to ensure that the Council can play a more active role in considering cases of non-cooperation with the International Criminal Court and to ensure that arrest warrants are

implemented — a necessary condition for the Court to be able to carry out its mandate.

With regard to issues on the Council's agenda, accountability is probably the word we hear the most. However, regrettably, calls for the perpetrators to be held accountable are not accompanied by real actions. In that connection, we reiterate our view that the proposals for action that were submitted by New Zealand a year ago, and which were also well received by the Office of the Prosecutor in her recent reports, would make it easier for the Security Council to take action in cases of non-cooperation with the Court. Specifically, the proposals are, first, that the Council adopt a more structured approach when addressing cases of non-cooperation, with the aim of determining which of the tools that the Council has at its disposal provides the most appropriate response and, secondly, to overcome the current stagnation in the relations between the Council and the Government of the Sudan in this area by making the most of the improvement in that relationship with regard to the political process in Darfur and cooperation with the African Union-United Nations Hybrid Operation in Darfur.

In conclusion, I would like to send a message of encouragement and congratulations to the Prosecutor for the investigative work on the crimes committed in Darfur. This undoubtedly promotes the strengthening of the rule of law and the building of a society in which there is accountability and where the rights and guarantees of all its inhabitants are fully respected.

**Mr. Llorenty Solíz** (Plurinational State of Bolivia) (*spoke in Spanish*): Bolivia thanks the Prosecutor of the International Criminal Court, Ms. Fatou Bensouda, for presenting the informative twenty-sixth report, in accordance with resolution 1593 (2005).

We have taken note of the progress in the investigations, as well as the difficulties that the Office of the Prosecutor has faced during the course of the investigations and in its judicial activity, which are both linked to situations that hinder the work entrusted to it by the Security Council. Bolivia believes that those who have committed alleged war crimes and crimes against humanity must be brought to justice. We cannot deny that this is an important element in the achievement of stable and lasting peace.

As we express our support for the work of the International Criminal Court, we recall that, when the Security Council referred the situation in Darfur to the

International Criminal Court through resolution 1593 (2005), it not only agreed to activate its jurisdiction for the prosecution of persons, but also urged the Court to support international cooperation in the promotion of the rule of law, the protection of human rights and the fight against impunity, while emphasizing non-jurisdictional activities such as the promotion of peace, reconciliation and institutional strengthening.

We encourage the Court to join the efforts of regional organizations and of the international community to strengthen the political processes in the Sudan, in particular as pertains to the Doha Document for Peace in Darfur. In that regard, we believe that cooperation with the African Union is essential. We recognize its indisputable commitment to the fight against impunity, as expressed in its Constitutive Act. In addition, we recall that the African Union has established a ministerial council to address the issues related to the case in question. In that regard, we call for the establishment of constructive dialogue that facilitates the work at hand and engenders trust between both institutions.

We see positive developments in the Sudan over the past year. For example, there were no clashes between the Government and rebel groups during the period covered by the Secretary-General's latest report on Darfur. Also worthy of note were the developments in the operational environment, the decrease in obstructions to the movement of the African Union-United Nations Hybrid Operation in Darfur and the increased cooperation between the Government and United Nations. The recent reports of the Secretary-General and the report of the Prosecutor have reflected such progress. Bolivia believes that this point has been reached mainly because of the joint work of the African Union, the Government and the United Nations, and we hope that all efforts will continue to focus on the consolidation of peace in Darfur.

It is important to emphasize that the development and future of international criminal justice are closely tied to the issues of State cooperation and complementarity. The International Criminal Court is a complementary court to the primary and sovereign capacities of each State in the administration of justice in its territory. Therefore, in addition to reaching effective and timely judgements, local capacities must be restored. In that regard, the case of Darfur should be especially analysed given that there has been more than a decade of conflict.

Bolivia upholds its obligations as a State party to the Rome Statute of the International Criminal Court and supports efforts to seek justice and fight impunity. We therefore call upon all States that have not yet done so to ratify the Rome Statute in order to guarantee its universal jurisdiction. We believe that the value of the principle of the universality of international criminal justice is fundamental at this point. The debate on the impunity of many who are responsible for committing war crimes and crimes against humanity is diluted in the face of the relative effectiveness of the capacities of the International Criminal Court owing to the non-ratification of the Rome Statute by some countries, which also weakens the overall effectiveness of its work. We insist that we cannot sustain sincere dialogue as long as there are countries that demand all the rigour of justice, but do not fulfil their own international obligations.

**Mr. Li Yongsheng** (China) (*spoke in Chinese*): China takes note of the briefing provided by Prosecutor Bensouda.

The overall situation in the Darfur region of the Sudan has been stable this year. The Sudanese Government has been actively dedicated to promoting the political process in Darfur and established a Government of National Reconciliation. It also enhanced the capacity-building of security and governance, as well as achieved some progress in the maintenance of stability and the advancement of reconstruction in Darfur. China welcomes such developments.

Meanwhile, Darfur is still facing various challenges in its quest for long-term security and stability, including those posed by armed groups. In lending support to the Sudanese Government to resolve the existing problems, the international community should fully respect the leadership of the Government, adopt an objective and impartial position and enhance communication and coordination with the Government.

China hopes that parties in Darfur will continue to resolve their differences through peaceful means, including through dialogue and consultations. China urges the relevant opposition parties and armed groups in the Sudan to join the political dialogue process at the earliest date. China supports the African Union and other regional and subregional organizations in continuing their mediation efforts.

China's position on the handling of the situation in the Sudan by the International Criminal Court remains

unchanged. China believes that the international community should fully respect the judicial sovereignty of the Sudan and give sufficient attention to the legitimate concerns of the African Union and the Sudanese Government on the handling of the situation in the Sudan.

**The President:** I shall now make a statement in my capacity as the representative of Japan.

I thank Prosecutor Bensouda for her briefing and the presentation of her twenty-sixth report on Darfur, as well as for her dedication and leadership. Japan is committed to the fight against impunity and to supporting the International Criminal Court (ICC). I would like to assure the Prosecutor of Japan's full support for the work of the Office of the Prosecutor.

In 2005, Japan, as a Security Council member, supported resolution 1593 (2005) in the light of the serious violations of human rights committed in Darfur. Japan believed that there was a role for the ICC to bring those perpetrators to justice. Cooperation with the Court is vital for the ICC to function effectively and produce successful outcomes. Japan once again calls for the full implementation of resolution 1593 (2005), which requires the full cooperation of the Government of the Sudan and all other parties. The continued failure to implement resolution 1593 (2005) will undermine the credibility and legitimacy of the Council. Follow-up on non-compliance is seriously needed.

While huge challenges remain in Darfur, such as the political process and the humanitarian and human rights situation, we have seen encouraging changes in both the situation in Darfur and the behaviour of the Government of the Sudan. There have been no open confrontations recently and the cooperation of the Government of the Sudan has significantly improved. We commend the efforts made by the Government of the Sudan, the African Union and the United Nations in that regard.

Those efforts must continue. However, regrettably, not much progress has been achieved on the work of the ICC concerning Darfur due to the lack of cooperation. Japan emphasizes that the Government's obligations under resolution 1593 (2005) with regard to cooperation with the Prosecutor and the ICC remain unchanged.

I would like to conclude by reiterating Japan's continued support for the activities of the ICC. Japan will be leaving the Council at the end of this month, but

we will continue to look forward to concrete progress on the issue.

I now resume my functions as President of the Council.

I give the floor to the representative of the Sudan.

**Mr. Mohamed** (Sudan) (*spoke in Arabic*): We would like to congratulate Japan on its assumption of the presidency of the Security Council for this month. We also commend Italy on presiding over the Council last month.

I would like to comment on a point raised by a number of representatives with regard to the collection of weapons. As the Security Council knows, the existence of small arms and light weapons in conflict zones contributes to insecurity and instability. The collection of arms and weapons in Darfur is therefore a challenge for the Government. In that connection, I would like to point to the recent meeting between the Vice-President of the Republic the Sudan and the Joint African Union-United Nations Special Representative for Darfur. The Vice-President stressed that the Government of the Sudan will not be part of the processing of collected weapons if the African Union-United Nations Hybrid Operation in Darfur (UNAMID) is to be responsible for that task. That is our degree of cooperation in this matter, an important one that represents one of three challenges that we face in our endeavour to ensure security and stability in Darfur.

The Sudan is not party to the International Criminal Court (ICC), whose Prosecutor and her Office have been blinded by political motives and are unable to see the clear and explicit position of international law, namely, that any international convention or agreement is binding only on its parties. It is strange that resolution 1593 (2005), which referred the situation in Darfur, in the Western part of our country, to the ICC, refers to the fact that the jurisdiction of the Court does not apply to countries that are not party to the ICC. That obvious contradiction with the explicit and binding rules of international law is the result of the inconsistencies inherent in the Statute of the ICC — notably, the broad, unlimited powers granted to the Prosecutor of the ICC. The shocking reports about corruption in the Court and of its Prosecutor only show the inconsistencies in the Statute of the Court.

We did not find this current report to be any different from previous reports. It has gone beyond all norms by attacking sovereign States and Heads of State. Our position is known by the Council, it is related to a number of reasons. We believe that there is an attempt to cover up for the Court, and we ask the Council to examine the situation in a specific meeting to see how far it affects the implementation of resolution 1593 (2005).

The Prosecutor's report and briefing make no reference to the armed groups and their responsibility for the violations. We would like to recall that we invoke an international law that bans any recourse to violence to achieve any political objective.

This is the twenty-sixth report of the Prosecutor of the ICC and her Office. During the short time we had to study and comment on the report, as was the case with previous reports, since the third report, we have time and again concluded that the Prosecutor and her Office are but tools for one single predetermined purpose — to use the ICC as a political tool to achieve a specific political objective.

To prove my point, I would like to refer the Council to paragraph 39 of the present report:

(*spoke in English*)

“The Office welcomes the adoption of Security Council resolution 2363 (2017), which extends the mandate of UNAMID until 30 June 2018.”

(*spoke in Arabic*)

The welcoming of resolution 2363 comes because the resolution does not end the Hybrid Mission in Darfur. The ICC would not like to see an end to the war in Darfur, as it is linked to specific political objectives. The ICC is trying to achieve this by applying its jurisdiction on the Sudan, without consideration for the actual reality in the region nor caring that the protraction of the war would lead to more bloodshed in Darfur. That is why are we convinced that attempts by the Court to exercise its jurisdiction over the Sudan and its leadership is one of several obstacles that we should all work to remove in order to achieve peace in the Sudan so it can turn its attention to its development — the main task of any Government — and achieve peace in Africa.

Resolution 2363 (2017) draws a clear line between war and peace in Darfur. The resolution decided to start a gradual scaling down of the peacekeeping

force towards a final exit, pursuant to paragraph 24 of resolution 1769 (2007), which created UNAMID. Regrettably, the Prosecutor and her Office lacked the courage and honesty to admit the reality to which resolution 2363 refers.

Based upon the Security Council referral resolution and the shameful political application in which the Pre-Trial Chamber and the previous and current prosecutors participated in, the Court has practiced politically based discrimination with regard to the cases it considers — the Sudan included — of which all are in Africa alone, among all continents and regions of the world. Such discrimination runs counter to pre-emptory norms of international law, as well as article 21 of the Rome Statute of the same Court, which in its sub-paragraph 3 clearly bans any discrimination on political basis.

As mentioned before, it is not surprising that the mere establishment of the Court, on the basis of its Statute, contravenes principles of international law, including sovereignty, sovereign equality among states, and the principle that international agreements and convention are binding only on their parties. In that respect, in paragraphs 7 and 8 of the report, the Pre-Trial Chamber rejects a recognized principle of international law relative to immunity and subjects it to Article 27 (2) of the Rome Statute.

Having followed the failures of the Court over the years, we are not surprised by such a position. It is rather consistent with previous positions, especially one particular position, where the Pre-Trial Chamber of the Court supported the destruction of evidence submitted by the previous Prosecutor, Mr. Luis Moreno Ocampo. It endorsed his decision to dismiss a senior officer in the Prosecutor's Office because that senior officer had filed a complaint against the conduct of the Prosecutor. The Council is undoubtedly aware that the Administrative Tribunal of the International Labour Organization ruled that dismissal null and void.

We view all those negative positions in a comprehensive context. The Court has not left even a remote chance for anyone with a good conscience to cherish the hope that it can achieve the objective it claims that it was created to serve — combating impunity. The countries that have bilaterally and regionally welcomed and received the President of the Republic of the Sudan have therefore upheld the major principles that govern relations among States — those of peace,

sovereign equality and the exchange of mutual benefits and interests. We view the targeting of the President of the Sudan with baseless charges that are refuted by all evidence as an assault on the political security and stability of my country. That constitutes an attempt to dismember the Sudan by pushing it into an endless and disastrous war.

South Africa, to which the report before the Council devotes several paragraphs, would not have attained peace or moved towards an apartheid-free future without applying the principle of amnesty and creating truth, justice and reconciliation commissions, which is the aim of the Doha Document for Peace in Darfur. The International Criminal Court, where the trial of one person costs more than €1.3 billion, has totally failed to contribute to the realization of justice and peace. To offer a simple comparison, the trial of one person in 1994 by the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 cost \$43.5 million, which compelled the Government of Rwanda to resort to its national courts, the Gacaca courts, where the trial of one person cost no more than \$540.

All of that places a heavy responsibility upon the Security Council to respond to the resolutions of successive African summits, which emphasize the need for a dialogue that leads to an acceptable solution to the continent and achieves the Security Council messages of peacemaking, peacebuilding and sustainability. I take this opportunity to commend the decision of Burundi to withdraw from the ICC, which we consider to be an African decision that promotes peace and stability in Burundi.

As has been said by the Representative of the Russian Federation before the Council during the consideration of the reports on the Sudan and on Libya, the Court has turned itself into a monitoring body. The report before us includes fabricated information concerning the current situation in Darfur, the number of displaced persons and the violations committed, all of which are outside the competence of the Prosecutor. Moreover, the report contains exaggerated figures that do not match the reports of the Department of Peacekeeping Operations. Such inconsistency requires

a serious investigation into and verification of the Prosecutor's information sources.

The Sudan is a country that is deeply rooted in history and has a rich share in human civilization, which was born on our continent. We therefore pay no attention to the contradictions and indecorous utterings and phrases of a Court that was born dead, as was stated by the former Chair of the United States Senate Committee on Foreign Relations. I call on the Council, to which resolution 1593 (2005) obliges the Prosecutor of the Court to submit two reports every year, to firmly reprimand the Prosecutor for recently referring to it as impotent. The previous and current Prosecutors have always attacked the Sudan, and have

therefore undermined all norms related to the work of the International Criminal Court.

In conclusion, it is my pleasure and privilege to reaffirm that the Sudan, by virtue of its continued cooperation with the international community and the Council, will pursue the course of lasting and comprehensive peace in Darfur and the implementation of resolution 2363 (2017), adopted by the Council in June. In doing so, we are protecting the people in a dear part of our country from falling victim to conflict — the same people who the Prosecutor and her Office are exploiting.

*The meeting rose at 12.55 p.m.*