



Statement : 12 December 2017

Statement to the United Nations Security Council on the Situation in Darfur, pursuant to UNSCR 1593 (2005)



12 December 2017

Mr President,

1. Allow me at the outset to congratulate Japan for holding the Presidency of this august body for the month of December, and to acknowledge publically the notable support your country has provided to my Office and the International Criminal Court, more generally, as an active and committed State Party.

Mr President, Your Excellencies,

2. Today, I provide this Council with my twenty-sixth report on the situation in Darfur pursuant to Resolution 1593.

3. 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.

4. Similarly, States Parties receiving 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.

5. 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.

Mr President, Your Excellencies,

6. 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.

7. 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 this 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.

8. 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 the 6th of July, earlier this year. This decision, it is recalled, related to South Africa's failure to arrest and surrender Mr Al Bashir to the ICC in June 2015.

9. 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.

10. This important decision by the Chamber, which was not appealed by either party, establishes that there was 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.

Mr President, Your Excellencies,

11. The Chamber, through this decision, has sent a clear message, and that is, 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.

12. It is my Office's hope that this message will be heeded and furthermore, that this Council will do its part to enforce decisions by the Court in relation to situations which 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.

13. Ultimately, despite its finding of non-compliance, the Chamber chose not to refer South Africa to either the Assembly of States Parties or this Council. The Chamber's decision in this regard was

informed by a number of factors, in particular that South Africa was the first State Party to utilise article 97 of the Statute to consult with the Court in relation to a request for arrest and surrender.

14. 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.

15. 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 this 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. This, 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.

Mr President, Your Excellencies,

16. 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 Sudan, that have failed to arrest and surrender Mr Al Bashir to the Court while on their territory.

17. This 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 this Council for such breaches.

18. 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 on Jordanian territory in late March. The Chamber found, by majority, that because the rights and obligations provided for in the Statute are applicable to 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.

19. The Chamber decided that Jordan's non-compliance should be referred to the Assembly of States Parties and this 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.

Mr President,

20. In short, since my last report to this Council, 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.

21. In this regard, in relation to other States Parties, most recently, the Republic of Uganda, despite having been referred to this Council in July 2016 for its failure to arrest and surrender Mr Al Bashir to the Court while he was on Ugandan territory in May 2016, once again invited and hosted Mr Al Bashir during the week of the 13th of November.

22. 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.

23. 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 in Uganda requesting, among other things, a warrant of arrest to be issued and executed against Mr Al Bashir.

24. The Ugandan court declined to issue this warrant of arrest in part, according to reports, due to the fact that Uganda is currently before this Council awaiting sanctions for its previous failure to arrest and surrender Mr Al Bashir on his visit in May 2016.

25. This latest development emphasises the importance and consequences of this 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.

26. Like Uganda, the Republic of Chad has been previously referred to this 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.

27. 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.

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

29. The foregoing events altogether underscore the detrimental impact on the Court's reputation and credibility in the eyes of victims who have pinned so much hope on the Court to deliver justice for their suffering.

30. I once again urge this Council to act on the sensible, moderate and entirely actionable proposals placed before it by New Zealand and other States Parties.

31. Concerted and uniform efforts should be made to discuss the Court's referrals of State Party non-compliance to the Council with the aim of exploring the options available to compel the States concerned to comply with their statutory obligations. This 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.

32. I welcome the declarations made by the European Union in relation to Mr Al Bashir's recent visits to Uganda and Russia. In particular, I welcome the EU's call to all Member States of the United Nations to abide by and implement the resolutions adopted by this Council under Chapter VII of the United Nations Charter, notably Resolution 1593. 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 provided in these declarations.

Mr President,

33. 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. This support has been crucial in obtaining additional information and evidence. Without such cooperation, the effective discharge of the Court's mandate can be undermined.

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

Mr President, Your Excellencies,

35. As in the past, I again take the 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.

36. My Office will continue to independently and impartially investigate these allegations. Let me stress once again that Mr Al Bashir and all other suspects from the situation in Darfur are presumed innocent until proven guilty and the burden of proving their guilt rests with my Office.

37. Allow me to also recall that this Council recently passed Resolution 2363 to extend the mandate of UNAMID. In this resolution, the Council called on all parties to comply with their obligations under international humanitarian law, stressing the importance that the Council attaches to ending impunity including through ensuring accountability and bringing to justice the perpetrators of crimes, including sexual and gender-based violence, allegedly committed by all parties in Darfur.

38. The work of the ICC is essential to fighting impunity for the world's most serious and destabilising crimes, and ensuring accountability in Darfur. To this end, I respectfully submit that the Court ought to be actively supported by this Council and the international community as a whole.

Mr President, Your Excellencies

39. Notwithstanding the decrease in the scale of the violence in Darfur, my Office continues to receive reports of unlawful killing of civilians, as well as of the continuing forced displacement of some 40,000 people due to the conflict.

40. Moreover, while there has also been a decrease in reports of sexual and gender-based crimes, my Office notes with great concern that these crimes are reportedly continuing, in particular, against young girls.

41. These crimes cannot be left unabated.

42. 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 toward my Office's on-going investigative activities in Darfur, as envisaged by the Rome Statute.

43. To conclude, I thank you, Mr President, Your Excellencies, and all who are following these proceedings before the Council within this Chamber or through video-link, for your concern and attention to the important issues at the focus of today's discussions.

44. 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.

45. Accountability for crimes under the Rome Statute is a necessary complement to sustainable peace and stability in Darfur. As such, I call on this Council to prioritise action on the outstanding warrants of arrest issued by the Court.

48. I thank you for your attention. | OTP

Source : Office of the Prosecutor