



**SELECTED PRACTISE OF THE UN SECURITY COUNCIL  
IN RELATION TO THE INTERNATIONAL CRIMINAL COURT AND THE ROME STATUTE  
SYSTEM (1998-2012)**  
*3<sup>rd</sup> Update: 10 October 2012*

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## About this Compilation

This Compilation contains the practise of the Security Council in relation to the ICC since the adoption of the Rome Statute in 1998. It refers to the decisions and actions of the Council and other actors, and to the information available to decision-makers with respect to situations where genocide, crimes against humanity or war crimes have been allegedly committed. This document does not purport to provide comprehensive contextual or analytical information about specific situations.

The practise has been compiled from public documents including the decisions and reports of the ICC, the Weekly updates of the Office of the Prosecutor, and the documentation website of the United Nations. For the section of thematic resolutions and the LRA, in particular, PGA has used as reference the documentation prepared by Security Council Report (<http://www.securitycouncilreport.org>). For Myanmar/Burma the research relied on the compilation provided in R. Goldstone, P. Wald, G. Nice et al, *Crimes in Burma* (The International Human Rights Clinic, Harvard Law School), 2009, available at <http://www.law.harvard.edu/programs/hrp/documents/Crimes-in-Burma.pdf>. For the situation in Syria, the reports from the International Coalition for the Responsibility to Protect have served as guideline for further research.

This document has been designed and compiled by Dr. Deborah Ruiz Verduzco, Deputy-Director, International Law and Human Rights Programme, Parliamentarians for Global Action in relation to a doctoral thesis on the ICC and the Security Council (Graduate Institute, Geneva, 2012). This document served as Conference Document for the Chatham House-PGA Meeting of Experts, Parliamentarians and other Policy-Makers on the Relationship between the ICC and the UNSC that took place in March 2012 in London. Further updates have been made under the supervision of the Senior Director, Dr. David Donat-Cattin) of PGA, with the support of Ms. Maia Trujillo, (Programme Associate) and the interns of the Programme, Ms. Alba I. León and Ms. Laetitia Garat.

Comments, additions or corrections to this document can be received via [deborah.ruiz@pgaction.org](mailto:deborah.ruiz@pgaction.org)

3<sup>rd</sup> Update with selected data as of 10 October 2012

## **Meeting of Experts, Parliamentarians and other Policy-Makers on The UN Security Council and the International Criminal Court, Chatham House – Parliamentarians for Global Action, 16 March 2012**

The first version of this compilation (16 March 2012) served as background discussion paper for the Meeting of Experts, Parliamentarians and other Policy-Makers on The UN Security Council and the International Criminal Court which was held at Chatham House, The Royal Institute of International Affairs on 16 March 2012. The Report of such meeting is the basis for the advocacy of PGA on the Security Council in relation to the *PGA ICC Campaign for the Effectiveness and Universality of the ICC*. Such Report, this compilation and other related documentation can be accessed at:

<http://www.pgaction.org/activity/2012/chatham-icc-sc.html>

<http://www.pgaction.org/entities/fora/un-security-council.html>

## **About Parliamentarians for Global Action**

Parliamentarians for Global Action, based in New York and The Hague, is a non-partisan non-for-profit organisation composed by members of Parliament from more than 130 countries around the world who are mobilised for the use of their legislative and political prerogatives to promote the end for impunity and the prevention of genocide, crimes against humanity, war crimes and the crime of aggression through the ICC and domestic jurisdictions.

This document was prepared by the International Law and Human Rights Programme of PGA in relation to PGA's Parliamentary Campaign for the Effectiveness and Universality of the International Criminal Court system, which receives the support from the European Union (European Commission), the Governments of Belgium, Liechtenstein, The Netherlands and Switzerland, and Humanity United.

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## 1. HIGHLIGHTS ON THE FIGHT AGAINST IMPUNITY THROUGH REFERRALS BY THE SECURITY COUNCIL UNDER ARTICLE 13 OF THE ROME STATUTE

### Rome Statute, Article 13

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

[...]

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;

[...]

### Security Council Resolution 1593 (2005):

...

“*Determining* that the situation in Sudan continues to constitute a threat to international peace and security, [...]

“*Acting* under Chapter VII of the Charter of the United Nations, [...]

“1. *Decides* to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court; [...]

### Security Council Resolution 1973 (2011):

...

*Mindful* of its primary responsibility for the maintenance of international peace and security under the Charter of the United Nations, [...]

*Acting* under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41, [...]

ICC referral

4. *Decides* to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court; [...]

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### 1.1 Côte d’Ivoire

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|------------------|---|
| 18 April 2003    | Côte d’Ivoire lodges an <i>ad hoc</i> declaration of acceptance of jurisdiction under article 12(3) of the Rome Statute.  |
| 25 May 2004      | The International Commission of Inquiry on the allegations of violations of human rights in the Ivory Coast (set up with support of the UN and the OHCHR on the basis of the Accords de Linas-Marcoussis) issues its Report. It recommends the Security Council to apply Chapter VII of the Charter to refer the situation in Côte d’Ivoire to the ICC.   |
| 25 May 2004      | <b>Statement by the President of the Security Council</b> , in which he notes the Report from the Commission of Inquiry, and reiterates his concern at the lack of advance in the peace process defined in the Linas-Marcoussis Agreement. The Council reiterates its demands for the Government to bring to justice all those responsible for human rights violations, and calls on the Secretary-General to establish a commission to investigate all human rights violations (S/PRST/2004/17). |
| 16 December 2010 | In the context of the post-electoral violence, the Security Council through a press statement on Côte d’Ivoire, warns all stakeholders that they will be held accountable   |

for attacks against civilians and will be brought to justice in accordance with international law.

- 30 March 2011 Through **Resolution 1975 (2011)** the Security Council indicates that the attacks taking place in Côte d'Ivoire could amount to crimes against humanity and that their perpetrators could be held accountable under international law. Also, the SC notes that the ICC may decide on whether it has jurisdiction over the situation in Côte d'Ivoire.
- 27 July 2011 In **Resolution 2000 (2011)**, the Security Council notes the request made to the Pre-Trial Chamber by the ICC Prosecutor on 23 July for authorization to open an investigation into crimes against humanity and war crimes allegedly committed in Côte d'Ivoire. On 3 October 2011, the PTC-III grants the Prosecutor with the authorisation to open an investigation for alleged crimes within the jurisdiction of the Court committed since 28 November 2010 and for ongoing crimes committed in the future. On 29 November 2011, former President Laurent Gbagbo is surrendered to the ICC. On 22 February 2012, the Pre Trial Chamber III expands the scope of the authorisation to crimes allegedly committed between 19 September 2002 and 28 November 2010.
- 26 July 2012 In **Resolution 2026 (2012)**, having noted the proceedings at the ICC resulting from the declaration of acceptance of jurisdiction lodged by Côte d'Ivoire, the Security Council urges the Ivorian Government to ensure in the shortest possible timeframe that, irrespective of their status or political affiliation, all those responsible for serious abuses of human rights and violations of international humanitarian law, notably those committed during the post-electoral crisis in Côte d'Ivoire, are brought to justice in accordance with its international obligations and that all detainees receive clarity about their status in a transparent manner. [The Council also *further encourages*, the Ivorian Government to continue its cooperation with the ICC].

## ***1.2 Darfur, Sudan***

- 18 September 2004 The Security Council adopts **Resolution 1564 (2004)** establishing the Commission of Inquiry in order to “rapidly establish an international commission of inquiry in order immediately to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable”.
- 25 January 2005 The Commission of Inquiry on Darfur, headed by Prof. Antonio Cassese issues its report concluding the alleged commission of crimes against humanity and war crimes, and the failure of the Sudanese authorities to prevent, investigate and prosecute those crimes. The Commission recommends the Security Council to refer the situation to the ICC on the basis of Article 13 of the Rome Statute.
- 31 March 2005 **Acting under Chapter VII of the UN Charter, the Security Council adopts Resolution 1593 referring to the ICC the situation in Darfur**, Sudan since 1 July 2002. As a result from the investigations in this situation, seven individuals (4 from the government side and 3 from the militias) have been found allegedly responsible for crimes under the jurisdiction of the ICC.

### **1.3 Democratic Republic of the Congo**

- 2003 Through a number of resolutions in relation to the need to address violence against women and girls as warfare in the DRC, which call upon the need to bring those responsible of atrocities and violations to IHL, the Council fails to make a reference to the recently established ICC jurisdiction (the Statute entered into force for the DRC on 1<sup>st</sup> July 2002). See for instance **Resolutions 1468 (2003) and 1493 (2003)**.
- 27 June 2012 Acting under Chapter VII of the UN Charter, the Security Council adopts **Resolution 2053 (2012)**, which inter alia, renews and expands the mandate of the UN Mission in the DRC, MONUSCO. Through this resolution, the SC stresses the importance of the Congolese Government actively seeking to hold accountable those responsible for war crimes and crimes against humanity in the country and of regional cooperation to this end, including through cooperation with the International Criminal Court (para. 13). In addition the Council, reiterates the urgent need for swift prosecution of all perpetrators of human rights abuses and international humanitarian law violations (preamble).

### **1.4 Gaza**

- 25 Sept. 2009 The UN Fact-Finding Mission on the Gaza Conflict (Goldstone Report) found that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed and that rocket and mortar attacks by Palestinian armed groups would constitute war crimes and may amount to crimes against humanity. The Mission recommended the Human Rights Council to request the United Nations Secretary-General to bring this report to the attention of the United Nations Security Council under Article 99 of the Charter of the United Nations so that the Security Council consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40 by the appropriate authorities of the State of Israel, acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to article 13 (b) of the Rome Statute.
- The Mission also recommended states parties to the Geneva Conventions of 1949 to start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Geneva Conventions of 1949. On 8 January 2009, the Security Council adopted Resolution 1860 whereby it condemned violence against civilians and acts of terrorism, but made no acknowledgement on the existence of war crimes or crimes against humanity.

### **1.5 Kenya**

- 30 January 2008 After a briefing by Under Secretary-General B. Lynn Pascoe on the situation in Kenya, including on the need for investigations into human rights abuses in Kenya, and upon a Belgian proposal, the Security Council issues a **press statement** calling “on Kenya’s leaders to do all that is in their power to bring the violence to an end and to restore calm.”
- 6 February 2008 The Council adopted **Presidential statement S/PRST/2008/4** in which it recalled the need to avoid impunity for crimes committed in the electoral-related violence.
- 18 March 2008 The Office of the High Commissioner for Human Rights issued the report of its fact-finding mission to Kenya on post-election violence. The report concludes that there is

evidence that government forces used excessive force and failed to protect the population. The report recommends, inter alia, a mandate for the truth commission to recommend criminal prosecutions and the establishment of a reparations programme.

26 November 2009 Pursuant to Article 15 of the Rome Statute, the prosecutor of the ICC requested to Pre-trial Chamber authorisation to open an investigation in the situation in Kenya. Six summonses to appear were issued, while the Pre-Trial Chamber has confirmed the charges against four of the indictees. The trials are set to begin in April 2013.

### **1.6 Libya**

26 February 2011 **The Security Council, acting under Chapter VII of the Charter of the United Nations, and taking measures under its article 41 unanimously adopted Security Council Resolution 1970, which inter alia refers the situation of Libya since 15 February 2011 to the ICC Prosecutor.** On 3 March 2011, the ICC Prosecutor announced his decision to open an investigation in the situation in Libya.

17 March 2011 The Security Council adopts **Resolution 1973** authorising the use of force to protect civilians in Libya. Resolution 1973 in its preamble recalls Resolution 1970 and the Council's decision to refer the situation to the ICC.

1 June 2011 The UN International Commission of Inquiry for alleged violations of international human rights law in Libya issues its report concluding that international crimes, specifically crimes against humanity and war crimes have been committed in Libyan territory, in large scale by pro-Gaddafi forces with a chain of command established by Gaddafi. The report calls for Libyan authorities to provide remedy, but moreover, it reminds that the UN Security Council through resolution 1970 (2011) has vested primary jurisdiction for determining criminal responsibility in the ICC (UN Doc. A/HCR/17/44)

2 March 2012 The International Commission on Inquiry on Libya, chaired by former ICC President Philippe Kirsch issues its second report whereby it confirms the systematic use of excessive force, large scale executions, arbitrary detentions, disappearances, rapes and sexual violence, use of landmines, and mercenaries by the Gaddafi regime. The report also documents crimes and gross human rights abuses committed against civilians such as arbitrary detentions, torture, and attacks on protected persons by militias, *thumar*. The Report also found that NATO forces did not deliberately targeted civilians. (UN Doc. A/HRC/19/68).

### **1.7 Mali**

20 March 2012 In the context of the tri-partite struggle among the independentist Tuareg militias, "Islamic" groups in Northern Mali and the central government, self-proclaimed Islamists rebels take control of three major cities in North-East Mali.

21 March 2012 The UN Secretary-General calls for calm and for grievances to be resolved peacefully and within the democratic process in Mali.

22 March 2012 Alleging lack of central control in Northern Mali, the military conducts a coup d'état in Bamako.

2 April 2012 ECOWAS adopts sanctions against military leaders in relation to the coup d'état. After a power-sharing agreement signed overseen by ECOWAS, the ECOWAS sanctions were lifted on 8 April.

3 April 2012 The Peace and Security Council of the African Union decides to support the implementation of ECOWAS sanctions and also to apply individual measures against



the military junta members and “all those involved in contributing to the destabilization of Mali”. The AU Council also adopts sanctions against the leaders and members of armed groups involved in the attacks in northern Mali and in atrocities against civilian populations. (AU/PSC/PR/COMM.(CCCXVI). As of 16 July 2012, the AU sanctions remain in place.

- 12 April 2012 The UN High Commissioner for Human Rights Navi Pillay expresses alarm in relation to continuing reports of serious human rights violations against the population of Mali, especially in rebel-held northern areas. She notes that acts of violence targeting civilians may constitute crimes under international law, which must be held accountable. The High Commissioner makes reference to the ICC noting that Mali is one of the 121 States that have ratified the Rome Statute.
- 30 April 2012 After a 10-day mission to Bamako and close monitoring, Human Rights Watch issued a report indicating that separatist Tuareg rebels, Islamist armed groups and Arab militias who seized control of northern Mali in April 2012 have committed numerous war crimes, including rape, use of child soldiers, and pillaging of hospitals, schools, aid agencies, and government buildings. HRW also received credible information that Malian army soldiers have arbitrarily detained and, in some instances, summarily executed ethnic Tuareg members of the security services and civilians. (<http://www.hrw.org/node/106800>). In a parallel report issued on 16 May, Amnesty International also documents the commission of numerous violations that may amount also to crimes against humanity.
- 1 July 2012 In an interview with AFP, the ICC Prosecutor Ms. Fatou Bensouda calls for an end to the destruction of Mali religious shrines in Timbuktu, Northern Mali. The Prosecutor states that such destruction “is a war crime which [her] office has authority to fully investigate.”
- 5 July 2012 **The Security Council adopts by unanimity and under Chapter VII of the UN Charter Resolution 2056 (2012)** providing a roadmap for restoration of constitutional order in Mali. The Council, in operative paragraph 16, “stresses that attacks against buildings dedicated to religion or historic monuments can constitute violations of international law which may fall under Additional Protocol II to the 1949 Geneva Conventions and the Rome Statute of the International Criminal Court, to which Mali is a State Party.” Between 22 March and 18 June 2012, the Council had issued two presidential statements and two press statements in relation to Mali that did not contain references to ICC crimes.
- 7 July 2012 The ECOWAS contact group of Mali requests the ICC to launch the necessary inquiries and legal proceedings in order to identify the perpetrators of war crimes in Mali.
- 10 July 2012 The UN Special Rapporteurs on cultural rights, Farida Shaheed and on freedom of religion or belief Heiner Bielefeldt echoed the ICC Prosecutor’s calls to stop the deliberate attacks against historical religious sites as it may constitute war crimes.
- 18 July 2012 At The Hague, Fatou Bensouda received in person a letter from the Minister of Justice of Mali containing the decision to refer the situation of “the most serious crimes committed on the territory of Mali since January 2012” (unofficial translation). The Press Release of this event indicates that the Cabinet of Mali had decided to refer the situation to the ICC on 30 May. In its referral letter, Mali argues its inability to investigate or prosecute the alleged perpetrators.

## **1.8 Myanmar/Burma**

- 2002-2009 Numerous resolutions adopted by the UN General Assembly, the Commission on Human Rights and the Human Rights Council recognise the existence of forced displacement, sexual violence, extrajudicial killings, torture and arbitrary detention in Myanmar.
- 12 August 2006 The Special Rapporteur of the Commission of Human Rights on the situation of human rights in Myanmar, Sergio Pinheiro states in his report that “widespread reports of forced labour, rape and other sexual violence, extortion and expropriation by Government forces continue to be received”.
- 15 September 2006 **The situation of Myanmar is placed in the agenda of the Security Council** upon request by the Permanent Representative of the United States, Amb. John Bolton.
- 16 November 2006 Media reports that the International Labor Organization will submit its documentation on Burmese forced labour to the Security Council, which has put Burma's human rights situation on its agenda for the first time. The ILO also intends to inform the ICC, where the Prosecutor could conclude that Burma's forced labour practices constitute both war crimes and crimes against humanity. No formal report to the UN Security Council was found on the record in relation to the ILO initiative.
- 5 June 2008 Amnesty International documents violations of international human rights and humanitarian law committed in Kayin State and Bago Division between 2005 through 2007. The Report includes information on violations committed in military operations by the Myanmar army (known as the *tatmadaw*) and on *tatmadaw* policy and practices that have targeted civilians. Amnesty International's report raises concern that the State Peace and Development Council (SPDC, Myanmar's military government) has not met its obligations under international law to protect civilians from widespread human rights abuses in the context of the armed conflict.
- 10 March 2010 The Progress report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana indicates that “human rights violations are the result of a State policy that involves authorities in the executive, military and judiciary at all levels. According to consistent reports, the possibility exists that some of these human rights violations may entail categories of crimes against humanity or war crimes under the terms of the Rome Statute of the ICC”. *The Rapporteur recommends the UN to consider the establishment of a commission of inquiry with a specific fact-finding mandate to address the question of international crimes.*
- 8 November 2010 Violent clashes in relation to the elections break out between ethnic Karen rebels and Myanmar troops, reportedly causing some 15,000 people to flee into northern Thailand. On 12 November, the UN High Commissioner for Refugees reported that most had returned to Myanmar.
- 18 November 2010 The Security Council holds consultations on recent developments in Myanmar by Vijay Nambiar, the Secretary-General's Chef de Cabinet and the Secretary-General's acting advisor on Myanmar. (UN Doc A/HRC/13/48). The main concerns at the Security Council in relation to Myanmar have been the electoral process and the release of political prisoners.
- 12 June 2012 Human Rights Watch warns of spiralling sectarian-violence between Arakan Buddhists and ethnic Rohingya Muslims. Brutal violence in Arakan State in western Burma erupted on June 3, 2012.



19 June 2012 The Council holds consultations on Myanmar with focus on violent clashes in Arakan, the humanitarian crisis and the political transition.

### **1.9 Sri Lanka**

13 May 2009 The Security Council issues a **Press Statement** urging parties to the conflict in Sri Lanka to ensure the protection of civilians in the ground. The Security Council was continuously briefed on the humanitarian and security situation on the ground since February 2009. (UN Doc. S/9659)

23 May 2009 The President of Sri Lanka and the UN Secretary-General issue a joint statement which includes the commitment to support the need to address accountability for the allegations of violations of international humanitarian and human rights law during the final stages of the conflict with the Liberation Tigers of Tamil Eelam.

27 May 2009 The UN Human Rights Council holds a special session on Sri Lanka, which highlights the situation of displaced persons and the lack of accountability for serious violations that may amount to war crimes. Resolution 11, adopted by the Human Rights Council therein however does not include any language on accountability or IDPs.

5 June 2009 The UN Secretary-General holds interactive dialogue at the Security Council on the situation in Sri Lanka. This meeting was not a formal meeting of the Security Council.

4 March 2010 The UN Secretary-General announces his intention to move forward in setting up a panel of experts to advise him on setting the broad parameters and standards on the way ahead on establishing accountability concerning Sri Lanka.

31 March 2011 The UN Secretary-General's Panel of Experts on Accountability in Sri Lanka finalises its Report. The Report makes reference to the legal framework provided by the Rome Statute although recognises that crimes committed in Sri Lanka are not currently subject to the jurisdiction of the ICC. The Report concludes that both parties to the conflict conducted their military operations with full disregard to the norms of international law in particular with respect to the protection of civilian population. The panel concludes that many of the violations may amount to crimes against humanity or war crimes. The report acknowledges the primary obligation of Sri Lanka to investigate and prosecute the international crimes committed but recommends the UN Secretary-General to establish an international mechanism to, *inter alia*, conduct independent investigations having regard to genuine domestic prosecutions. No recommendations were issued to the Security Council.

18 December 2011 In parallel to the UN Panel, the Lesson-Learned and Reconciliation Commission (LLRC) established by the Sri Lankan government presents to the Sri Lankan President its final report. The LLRC had among its mandate to establish whether any person, group or institution directly or indirectly bear responsibility for the sequence of events after 19 May 2009. The Commission fails to attribute responsibility to the armed forces for violations, often citing the absence of intention for the commission of violations against civilians. The Report however documents blatant violations committed by the LTTE. The Report does not make reference to the Rome Statute framework and fails to provide avenues for accountability.

4 April 2012 The US State Department Office of Global Criminal Justice (GCJ), formerly the Office of War Crimes Issues (WCI), led by Ambassador-at-Large Stephen Rapp submits a report on Sri Lanka to the U.S Congress. Notably, the report highlights that the LLRC Reports fails "to critically analyze or investigate the "white flag" incident, in which high level LTTE leaders were allegedly shot despite assurances from the GSL

that they could safely surrender.” In its report, Ambassador Rapp indicates that the discrepancies between the report of the UN Panel of Experts and the LLRC merits further investigation. The Rapp Report includes a section on avenues for accountability which do not mention to the framework of the Rome Statute or to the potential jurisdiction of the ICC by way of referral.

22 March 2012 The UN Human Rights Council adopts a resolution promoting reconciliation and accountability in Sri Lanka. The resolutions note with concern that the report of the LLRC did not adequately address serious allegations of violations of international law and calls on the Government to take all necessary steps to fulfil its relevant legal obligations and commitment to initiate credible and independent actions to ensure justice, equity, accountability and reconciliation for all Sri Lankans. The resolution further requests the Government to present a comprehensive action plan detailing the steps to implement the recommendations made in the Commission’s report and to address alleged violations of international law.

### **1.10 Syria**

15 September 2011 The Report of the OHCHR Fact-Finding Commission to Syria, established pursuant to a decision by the UN Human Rights Council, found the existence of a pattern of human rights violations that may constitute crimes against humanity. As part of its recommendations, the report: “urges the Security Council to remain seized of and to address, in the strongest terms, the killing of peaceful protestors and other civilians in the Syrian Arab Republic through the use of excessive force and other grave human rights violations, to call for an immediate cessation of attacks against the civilian population, and to consider referring the situation in the Syrian Arab Republic to the International Criminal Court.” (UN Doc. A/HRC/18/53)

4 October 2011 France, Germany, Portugal and the UK table a **draft resolution** on Syria which calls for accountability of violence and human rights violations, and condemns attacks against diplomatic personnel but not against civilians. The resolution was not adopted. (UN Doc. S/2011/612)

5 December 2011 The UN High Commissioner for Human Rights at the Human Rights Council 18th Special Session reiterates the recommendation to the Security Council to refer the situation in Syria to the ICC.

4 February 2012 The Russian Federation and China vetoed a Security Council draft resolution that would have demanded all parties in Syria to stop all violence and reprisals, to cooperate with the Office of the High Commissioner for Human Rights and the Commission of Inquiry dispatched by the Human Rights Council. There was no reference in the draft to the International Criminal Court (UN Doc. S/2012/77).

16 February 2012 The UN General Assembly adopts **Resolution A/66/253** strongly condemning “widespread and systematic” human rights violations by Syrian Authorities. The Resolution mirrors the text vetoed on 4 February 2012 by China and the Russian Federation at the Security Council.

22 February 2012 The Report on the Independent International Commission of Inquiry on the Syrian Arab Republic documents “a widespread and systematic pattern of gross violations committed by State forces – in conditions of impunity – since March 2011.” The Commission only recommended that Syria ratifies the Rome Statute of the International Criminal Court and that it adopts domestic legislation consistent with it. It makes no mentioning to a referral by the Security Council (A/HRC/19/69).

- 27 February 2012 At the High-Level segment of the Human Rights Council session on Syria, the French Minister of Foreign Affairs, Mr. Alain Juppé, stated that France wishes the Security Council to refer the situation in Syria to the ICC.
- 21 March 2012 Through a press statement (UK presidency), the Security Council condemned the terrorist attacks that occurred in Damascus, Syria, on 17 and 19 March and in Aleppo, Syria, on 18 March, causing scores of deaths and injuries. The statement makes no linkage between the attacks and war crimes or crimes against humanity.
- 5 April 2012 The Joint Special Envoy of the United Nations and the League of Arab States Kofi Annan briefs the Council on his six-point proposal which, *inter alia*, seeks to ensuring the cease, by April 10, of the use of heavy weapons in population centres. The plan contains no elements of accountability.
- 10 May 2012 Through a Press Release, the members of the Security Council condemned in the strongest terms the terrorist attacks that occurred in Damascus, Syria on 10 May, causing numerous deaths and injuries. (SC/10643)
- 27 May 2012 The Council issued a **press statement** (Presidency of Azerbaijan) condemning the killings of dozens of men, women and children and the wounding of hundreds more in the village of El-Houleh, near Homs, in attacks that involved a series of Government artillery and tank shellings on a residential neighbourhood. The members of the Security Council also condemned the killing of civilians by shooting at close range and by severe physical abuse. Although the Council stated that the use of force against civilian population constitutes a violation of applicable international law, it failed to make reference to the specific framework of IHL or of the Rome Statute.
- 2 July 2012 At a closed-door briefing, the UN High Commissioner for Human Rights, Navi Pillay, renewed her call on the Security Council to refer the situation in Syria to the ICC, stressing the need to ensure accountability for the serious abuses committed by both sides in the ongoing conflict. She stated: “In my view, both Government forces and armed opponents have been involved in actions harming civilians...those responsible for attacks against civilians must be held accountable, and so I reiterated my call on the Security Council to refer the situation in Syria to the International Criminal Court as I believe that the evidence points to the commission of crimes against humanity.”
- 6 July 2012 The Report of the Secretary-General on the implementation of Security Council Resolution 2043 (2012) makes reference in section 10(d) to the general need for accountability for acts committed during the conflict indicating that it must include a comprehensive package for “transitional” justice, including compensation or rehabilitation for victims of the present conflict, steps towards national reconciliation and forgiveness.
- 12 July 2012 A massacre of more than 200 civilians in the village of Tresmeh located in the Hama province is reported. Amnesty International calls UNSMIS to investigate the incident. A report from the UN of 14 July confirms that the attack involved the use of heavy machinery by security forces against armed opposition forces.
- 15 July 2012 The opposition initiates "the final battle for the capital" in Damascus. By 18 July, 60 soldiers have been reported killed. On 18 July, a bomb triggers by the Islamist Group Liwa al-Islam and Free Islam Army strikes the National Security Building killing the Defence minister, the brother in law of President Assad and two other officials.

### **1.11 Yemen**

- 3 February 2011 A wave of anti-government social protests. According to UN reports, between February and November 2011, the protests claimed over 200 lives and left more than 1,000 people wounded.
- 24 June 2011 The Security Council issues a press statement expressing grave concern at the deteriorating situation and welcomed the mediation efforts by the Gulf Cooperation Council (GCC).
- 9 August 2011 The Council issues a press statement expressing its concern at the serious deterioration of the situation in Yemen urging all parties to move forward whilst acknowledging the importance of the GCC initiative. The GCC initiative calls for a peaceful transition of power from President Ali Abdullah Saleh to Vice President Abdrabuh Mansour Hadi during an interim period leading up to elections. The initiative also provides immunity to Saleh and his family.
- 13 September 2011 The OHCHR issues the report on its visit to Yemen. It makes no explicit mention to the International Criminal Court, although determines that “given the lack of confidence in the judiciary to conduct impartial investigations into human rights abuses related to the peaceful protest movement there is a need for international, independent and impartial investigations to take place.” (UN Doc. A/HRC/18/21)
- 18 October 2011 Rupert Colville, spokesperson for the Office of the High Commissioner for Human Rights (OHCHR) strongly condemned the reported killing of a number of peaceful protesters at the hands of security forces in recent days. The OHCHR calls for an international, independent, transparent investigation, for accountability and for justice and has stated that all “those responsible for the hundreds of killings since the protest movement began in Yemen more than eight months ago must be prosecuted, regardless of rank or title.”
- 21 October 2011 The Security Council adopts unanimously **Resolution 2014 (2011)** whereby it condemns human rights violations by Yemeni authorities and abuses by other actors. In it, the SC underlines “the need for a comprehensive and impartial investigation consistent with international standards into alleged human rights abuses and violations, with a view to avoiding impunity and ensuring full accountability ... noting the concerns expressed by the High Commissioner for Human Rights...” The Resolution does not mention the Rome Statute or the ICC.
- 3 December 2011 At least 30 people were reported to have been killed in Taiz during clashes between government forces and anti-government fighters.
- 6 December 2011 Navi Pillay, the UN High Commissioner for Human Rights, deplored the recent killing of unarmed civilians in Yemen. “It is appalling and extremely disappointing that despite the successive deals and ceasefires, government security forces continue to use live ammunition against unarmed protestors”. The violations were not characterized in reference to Rome Statute crimes.
- 24 December 2011 Large protests take place against the killing of nine demonstrators in Taiz by forces loyal to President Ali Abdullah Saleh. On 5 January, country-wide protests demanding the release of political detainees took place. On 14 January, militants reportedly affiliated with Al-Qaeda seized the town of Radda in Al-Baydah province, 105 miles southeast of Sana’a, on 14 January. On 23 January, a wave of mutinies spread to four Yemeni air bases.
- 6 January 2012 The UN High Commissioner for Human Rights urged decision-makers in Yemen to respect the prohibition in international law against amnesties for gross human rights

- violations. Pillay observed that international law and UN policy are clear in that amnesties were not permissible if they prevented the prosecution of individuals suspected of international crimes, including war crimes, crimes against humanity, genocide and gross violations of human rights.
- 8 January 2012 The government approved a draft law granting Saleh and his aides immunity from prosecution for the deaths of protesters. The draft law was amended on 19 January to offer blanket immunity to Saleh but only shield his aides in “political cases.” The amended law was adopted on 21 January.
- 22 February 2012 The Council issues a press statement acknowledging the significance of the political transition through presidential election of 21 February and encouraging a fully inclusive national dialogue, the constitutional review and other pending issues. No reference was made to the situation of civilians or to the brokered amnesty.
- 6 May 2012 Fahd al-Quso, the leader of Al-Qaida in the Arab Peninsula (AQAP), was killed in a U.S. drone strike in the southern Shabwa province. Al-Quso was under a U.S. indictment for his role in the 2000 bombing of the American navy destroyer.
- 21 May 2012 The Security Council issues a **press statement** to condemn the suicide attack that killed 96 soldiers and injured many more in the midst of a military parade rehearsal in Sana’a, the day before Yemen was to commemorate its National Unity Day.
- 12 June 2012 The Security Council unanimously adopts **Resolution 2051**, expressing its “readiness to consider further measures, including under Article 41” should actions to undermine the government of National Unity and the political transition continue. The resolution also “stresses that all those responsible for human rights violations and abuses must be held accountable.” The Resolution focused on the second phase of the transition process which includes transitional justice and national reconciliation
- June 2012 Clashes between pro-government forces and an Al-Qaida-affiliated group called Ansar al-Sharia (Partisans of Islamic Law) in the southern Abyan province, had reportedly led to more than 600 deaths and several wounded by mid-June.

### ***1.12 Selected thematic decisions***

- 25 August 1999 The Security Council adopts **Resolution 1261 (1999)** which notes in its Preamble the recent efforts to bring to an end the use of children as soldiers in violation of international law, notably in the Rome Statute of the International Criminal Court.
- 8 March 2000 In the landmark **Press Release** which on the on the occasion of International Women’s Day placed the issue of Women, Peace and Security for the first time in the agenda of the Security Council, the Council welcomes the inclusion as a war crime, in the Rome Statute of all forms of sexual violence and notes the role the Court could play to ending impunity for perpetrators of such crimes. (SC/6816)
- 11 August 2000 The Security Council adopts **Resolution 1314 (2000)** which urges all parties to armed conflict to fully respect international law applicable to the rights and protection of children in armed conflict, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court.
- 31 October 2000 In its landmark **Resolution 1325 (2000)** on women, peace and security, the Council recalls the provisions of the Rome Statute.
- 20 November 2001 The Security Council adopts **Resolution 1379 (2001)** which urges Member States to put an end to impunity, prosecute those responsible for genocide, crimes against



humanity, war crimes, and other egregious crimes perpetrated against children and exclude, where feasible, these crimes from amnesty provisions and relevant legislation, and ensure that post-conflict truth-and-reconciliation processes address serious abuses involving children. *There is no mention to the ICC or to the Rome Statute.*

- 30 January 2003 The Security Council adopts **Resolution 1460 (2003)** which, in its Preamble, emphasizes the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children, and notes the fact that the conscription or enlistment of children under the age of 15 into the national armed forces or using them to participate actively in hostilities is classified as a war crime by the Rome Statute.
- 22 April 2004 The Security Council adopts **Resolution 1539 (2004)** which, in its Preamble, recalls the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children, and notes the fact that the conscription or enlistment of children under the age of 15 or using them to participate actively in hostilities in both international and non-international armed conflict is classified as a war crime by the Rome Statute.
- 23 August 2004 The Report of the Secretary-General on the Rule of Law and transitional justice in conflict and post-conflict societies devotes a central part to the importance of the ICC, of referrals by the Council and to the universal ratification of the Rome Statute. (S/2004/616)
- May 2004 – Aug. 2009 In relation to the debate on the protection of children in armed conflict, the Council adopted on 26 July 2005, **Resolution 1612 (2005)** which although recalls the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children makes no reference to the ICC or to the framework provided by the Rome Statute. Similar absent direct reference to the ICC and to the Rome Statute is to be noted in **Resolution 1882 (2009)** adopted on 4 August 2009. Between 2005 and 2009, the Council also issues a number of **Presidential statements** which recall the obligation to bring those alleged to have committed grave violations against children in situations of armed conflict, or that call upon states to ratify international treaties that safeguard the rights of children. Such statements however have no reference to the framework provided by the Rome Statute or to the existing jurisdiction of the ICC. See for instance, S/PRST/2006/33 (24 July 2006), S/PRST/2006/48 (28 November 2006), (S/PRST/2008/6) 12 February 2008), S/PRST/2008/28 (17 July 2008), S/PRST/2009/9 (29 April 2009). This is also the case for a number of resolutions in relation to the respect of international humanitarian law, or the rule of law that fail to refer to the need of compliance to the Rome Statute. (See inter alia, **Resolution 1674 (2006)**, S/PRST/2009/1, S/PRST/2006/28, S/PRST/2005/30 and S/PRST/2004/2)
- 28 October 2007 In his report on the protection of civilians in armed conflict, the UN Secretary-General calls upon greater emphasis by the Council and the ICC on the criminal dimensions of denial of humanitarian access prevalent in a number of situations around the world. Also, the Secretary-General emphatically recommends the Council to refer situations of grave incidents of rape and other forms of sexual violence, of grave instance of denial of humanitarian access, as well as situations involving attacks against humanitarian workers to the International Criminal Court. (S/2007/643)



- 29 May 2009 In his report on the protection of civilians in armed conflict, the UN Secretary-General recommends the Council to systematically request reports on violations of IHL and to consider mandating commissions of inquiry to examine situations where concerns exist regarding serious violations of international humanitarian law and human rights law, including with a view to identifying those responsible and prosecuting them at the national level, or referring the situation to the ICC. The SG also recommends the Council to refer to the ICC grave and prolonged instances of the wilful impediment of relief supplies or of attacks against humanitarian workers. (S/2009/277)
- 11 June 2010 The Review Conference to the Rome Statute adopts Resolution 6 on the crime of aggression. The provisions for Article 15 *bis* and *ter* (still pending entry into force) preserve the mechanism of referral powers for the crime of aggression as provided by Article 13 of the Rome Statute of 1998.
- 16 June 2010 Through a **Presidential Statement** at the conclusion of the debate on Children and Armed Conflict, the Security Council strongly condemns the recruitment and use of children in armed conflict and states that action should be taken by Member States against persistent perpetrators of violations and abuses against children in situations of armed conflict using where applicable, international justice mechanisms and mixed criminal courts and tribunals. The statement makes no reference to the ICC or the Rome Statute but France, Liechtenstein, Italy, Costa Rica, Croatia, the republic of Korea, and the Netherlands stress in their participation the role that the International Criminal Court could play in achieving this goal. (UN Doc. S/PRST/2010/10)
- 29 June 2010 The Security Council adopts a **Presidential Statement** in relation to the rule of law and the maintenance of peace and security in which it recognizes the contributions of the ICC as well as ad hoc and mixed tribunals and chambers in national tribunals to the fight against impunity for the most serious crimes of concern to the international community (S/PRST/2010/11).
- 26 October 2010 Through a **Presidential Statement** the Council notes that the fight against impunity for the most serious crimes of international concern committed against women and girls has been strengthened through the work of the International Criminal Court, ad hoc and mixed tribunals, as well as specialized chambers in national tribunals and takes note of the stocktaking of international criminal justice undertaken by the first Review Conference of the Rome Statute held in Kampala, Uganda from 31 May to 11 June 2010. (S/PRST/2010/22). A similar text was adopted in the **Presidential Statement** on the protection of civilians issued on 22 November 2010 (S/PRST/2010/25). Between October 2002 and September 2010 the Council had issued a number of **Presidential Statements** condemning sexual violence against women in the context of armed conflict, and while emphasizing the need to end impunity did not make a reference to the Rome Statute or to the ICC.
- 24 November 2010 In his report on the implementation of resolutions 1820 and 1888, the Secretary-General recommends the Council to employ all additional means at its disposal to influence parties to conflict to comply with, international law, including referring matters to the International Criminal Court. (S/2010/604)
- 16 December 2010 Through **Resolution 1960 (2010)** the Security Council in relation to sexual violence, the Council recalls the inclusion of sexual violence offences in the Rome Statute.
- 14 April 2011 The UNSG's Special Representative on Sexual Violence in Conflict, Margot Wallström, informs the UN Security Council that measures against sexual violence

should be automatically and systematically included in provisions to protect civilians like those in the UN Security Council's Libya resolutions, or otherwise, interventions on the frontlines may relegate women's security to the sidelines.

- 12 July 2011 The Security Council adopts **Resolution 1998 (2011)** on the protection of children in armed conflict noting the relevant provisions of the Rome Statute of the International Criminal Court. In this resolution the Council also calls upon Member States concerned to take decisive and immediate action against persistent perpetrators of violations and abuses committed against children in situations of armed conflict, and further calls upon them to bring to justice those responsible for such violations. No direct reference is made to the ICC
- 21 July 2011 The Special Representative of the Secretary-General for children and armed conflict, Radhika Coomaraswamy issued its 2011 report which highlighted the persistent use of children in hostilities. The Report lists the countries where the state armed forces or irregular groups use, maim, abuse, or abduct children including: Afghanistan, Central African Republic, Chad, DRC, Iraq, Myanmar, Somalia, South Sudan, Syria, Colombia, Philippines and Yemen.
- 28 October 2011 In a **Presidential Statement** in connection with the consideration of the item Women and peace and security, the Council notes that the fight against impunity for the most serious crimes of international concern committed against women and girls has been strengthened through the work of the International Criminal Court, ad hoc and mixed tribunals, as well as specialized chambers in national tribunals and takes note of the stocktaking of international criminal justice undertaken by the first Review Conference of the Rome Statute held in Kampala, Uganda from 31 May to 11 June 2010. (S/PRST/2011/20).
- 9 November 2011 The UN Secretary-General in his remarks to the Security Council's Open Debate on the Protection of Civilians in Armed Conflict states that compliance with international human rights and humanitarian law should be backed by the threat of targeted sanctions and intense scrutiny, including through commissions of inquiry or referrals to the ICC. (UN Doc. S/PV.6650)
- 19 January 2012 The Security Council adopts **Presidential Statement 2012/1** on the Promotion and Strengthening of the Rule of Law in the maintenance of international peace and security whereby it "recalls the Statement by its President on 29 June 2010 (S/PRST/2010/11) that recognizes the contribution of the International Criminal Court to the fight against impunity for the most serious crimes of concern to the international community". The Council reiterates its previous call on the importance of State cooperation with these Courts and Tribunals in accordance with the states' respective obligations.
- 11 June 2012 The UN Secretary-General submits the **11th Annual Report on Children and Armed Conflict to the UN Security Council**. The report highlights that while progress has been made over the past year to better protect children, the growing number of parties to conflict committing grave violations and the steady number of 'persistent perpetrators' listed in the report requires urgent UN Security Council action to end impunity and protect the lives and rights of children living in areas of conflict. The Annual Report covers 23 situations, including 14 where killing and maiming of children, recruiting and using child soldiers, attacks against schools or hospitals, rape or other grave sexual violence against children, abduction of children, and denial of humanitarian access for children takes place. In his recommendations, the Secretary-General encourages the Council to increase pressure on those parties

who are persistent perpetrators of grave violations against children including through the application of targeted measures linked to sanction regimes; the development by the Council of other concrete measures, including specific consultations on persistent perpetrators; and the close cooperation with national and international courts to address persistent perpetrators who have not taken concrete steps to halt grave violations. *The Rome Statute or the ICC are not mentioned directly.* The open debate at the Security Council on this report will take place in September 2012.

## 2. HIGHLIGHTS ON COOPERATION WITH THE ICC: DIPLOMATIC SUPPORT, ARREST, FREEZING OF ASSETS, NON-COOPERATION AND FINANCING

### **Rome Statute**

#### **Article 87**

[...]

**(5)(b)** Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.

[...]

7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.

### **UN-ICC Negotiated Agreement**

...

*Desiring* to make provision for a mutually beneficial relationship whereby the discharge of respective responsibilities of the United Nations and the International Criminal Court may be facilitated,

#### **Article 3 Obligation of cooperation and coordination**

The United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute.

**Article 5(2).** The United Nations and the Court shall make every effort to achieve maximum cooperation with a view to avoiding undesirable duplication in the collection, analysis, publication and dissemination of information relating to matters of mutual interest. They shall strive, where appropriate, to combine their efforts to secure the greatest possible usefulness and utilization of such information.

**Article 7 Agenda items** The Court may propose items for consideration by the United Nations. In such cases, the Court shall notify the Secretary-General of its proposal and provide any relevant information. The Secretary-General shall, in accordance with his/her authority, bring such item or items to the attention of the General Assembly or the Security Council, and also to any other United Nations organ concerned, including organs of United Nations programmes and funds.

**Article 17(3)** Where a matter has been referred to the Court by the Security Council and the Court makes a finding, pursuant to article 87, paragraph 5 (b) or paragraph 7, of the Statute, of a failure by a State to cooperate with the Court, the Court shall inform the Security Council or refer the matter to it, as the case may be, and the Registrar shall convey to the Security Council through the Secretary-General the decision of the Court, together with relevant information in the case. The Security Council, through the Secretary-General, shall inform the Court through the Registrar of action, if any, taken by it under the circumstances.

#### **Article 18 Cooperation between the United Nations and the Prosecutor**

1. With due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, the United Nations undertakes to cooperate with the Prosecutor and to enter with the Prosecutor into such arrangements or, as appropriate, agreements as may be necessary to facilitate such

cooperation, in particular when the Prosecutor exercises, under article 54 of the Statute, his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations in accordance with that article.

2. Subject to the rules of the organ concerned, the United Nations undertakes to cooperate in relation to requests from the Prosecutor in providing such additional information as he or she may seek, in accordance with article 15, paragraph 2, of the Statute, from organs of the United Nations in connection with investigations initiated *proprio motu* by the Prosecutor pursuant to that article. The Prosecutor shall address a request for such information to the Secretary-General, who shall convey it to the presiding officer or other appropriate officer of the organ concerned.

3. The United Nations and the Prosecutor may agree that the United Nations provide documents or information to the Prosecutor on condition of confidentiality and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or to third parties, at any stage of the proceedings or thereafter, without the consent of the United Nations.

4. The Prosecutor and the United Nations or its programmes, funds and offices concerned may enter into such arrangements as may be necessary to facilitate their cooperation for the implementation of this article, in particular in order to ensure the confidentiality of information, the protection of any person, including former or current United Nations personnel, and the security or proper conduct of any operation or activity of the United Nations.

#### **Article 22 Amendments**

The present Agreement may be amended by agreement between the United Nations and the Court. Any such amendment shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify each other in writing of the date of such approval, and the Agreement shall enter into force on the date of the later of the said approvals.

#### **Security Council Resolution 1593 (2005):**

“2. *Decides* that the Government of Sudan and all other parties to the conflict in Darfur shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully;..”

#### **Security Council Resolution 1973 (2011):**

“5. *Decides* that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor;...”

### **2.1 Côte d’Ivoire**

26 July 2012

**In Resolution 2026 (2012)**, having noted the proceedings at the ICC resulting from the declaration of acceptance of jurisdiction lodged by Côte d’Ivoire, the Security Council urges the Ivorian Government to ensure in the shortest possible timeframe that, irrespective of their status or political affiliation, all those responsible for serious abuses of human rights and violations of international humanitarian law, notably those committed during the post-electoral crisis in Côte d’Ivoire, are brought to justice in accordance with its international obligations and that all detainees receive clarity about their status in a transparent manner, and *further encourages*, the Ivorian Government to continue its cooperation with the ICC.

## **2.2 Darfur**

- 31 March 2005 Acting under Chapter VII of the UN Charter, the Security Council adopts **Resolution 1593** which refers to the ICC the situation in Darfur, Sudan. The Resolution imposes an obligation to the Government of Sudan and all parties to the conflict in Darfur to cooperate with the ICC. The Council also urges all States and concerned international organisations to cooperate fully.
- 29 June 2005 1<sup>st</sup> OTP Report to the UN Security Council on the basis of Resolution 1593: The Prosecutor briefs the Council on his preliminary investigations on Darfur, highlighting the obligation to respect the conditions for admissibility. The OTP informs of exploratory meetings with the Government of Sudan and on forthcoming requests that will require full and unfettered cooperation of the Government and other parties with the Court. The OTP also reports of the engagement with African Union in order to strengthen the cooperation with the ICC.
- June 2005-Jan 2006 The Government of Sudan signs an *ad hoc* agreement with the ICC OTP for the execution of the arrest warrants issued against LRA leaders
- 13 December 2005 2<sup>nd</sup> OTP Report to the UN Security Council on the basis of Resolution 1593: The Prosecutor indicates its continued monitoring of the Sudan to conduct investigations and prosecutions up to the standards of the Rome Statute and informs the Council of the factors being taken in the construction of cases, alerting that he will focus on those bearing the greatest responsibility.
- 14 June 2006 3<sup>rd</sup> OTP Report to the UN Security Council on the basis of Resolution 1593: The ICC Prosecutor acknowledges the importance of counting with cooperation from the Government of Sudan and the African Union for the conduct of investigations of alleged crimes committed in Darfur.
- 14 December 2006 4<sup>th</sup> OTP Report to the UN Security Council on the basis of Resolution 1593: The ICC Prosecutor informs of the exchange of information and missions conducted to Sudan, as well as three outstanding responses to some requests of information.
- 27 April 2007 The ICC accepts the request of the Prosecutor and issues arrest warrants against Ahmed Haroun and Ali Kushayb for crimes against humanity and war crimes.
- 5 December 2007 6<sup>th</sup> OTP Report to the UN Security Council: The ICC Prosecutor informs of the failure of cooperation of the Sudanese Government to execute the arrest warrants against Harun and Kushayb. Lack of cooperation has been highlighted therein at each subsequent report by the Prosecutor to the Council.
- 5 June 2008 7<sup>th</sup> OTP Report to the UN Security Council: The Prosecutor recalls that Sudan is not cooperating with the Court and calls upon the Council to ensure respect to Resolution 1593 (2005)
- .16 June 2008 Costa Rica, as President of the Security Council, gathers consensus of all members of the Council to issue **Presidential Statement 2008/21** in which the Council recalls the Government of Sudan and other parties to the conflict of their obligation to fully cooperate with the ICC upon Resolution 1593. The Statement also takes note of the arrest warrants issued by the ICC in relation to the situation in Darfur. No further measure has been taken by the Security Council since this date. No other similar Presidential Statement has been issued in relation to Darfur (S/PRST/2008/21).
- 14 July 2008 The Prosecutor applies to the ICC judges for an arrest warrant against President Al Bashir for charges of genocide, crimes against humanity, and war crimes.



- 3 December 2008 8<sup>th</sup> OTP Report to the UN Security Council: The Prosecutor highlights the need of all States to cooperate with the ICC severing political support and financial aid to those individuals subject of an arrest warrant, as well as non-essential contacts with indictees. The Prosecutor reaffirms the non-applicability of immunity for the most serious crimes.
- 4 March 2009 On the eve of issuance of a warrant for the arrest of President Omar Hassan Al-Bashir for crimes against humanity and war crimes, UN Secretary-General Ban Ki-Moon calls on Sudan to continue to cooperate fully with all UN entities.
- 18 May 2009 Bahar Idriss Abu Garda appears at the ICC in relation to his trial for alleged war crimes committed in the context of attacks against the Haskanita UN base in Darfur. On 29 October 2009, the ICC judges declined to confirm the charges and the case was dismissed unless new evidence is presented by the Prosecutor.
- 5 June 2009 9<sup>th</sup> OTP Report to the UN Security Council: The Prosecutor recalls that the Court relies on this Council to assist in enhancing such cooperation as mandated in UNSCR 1593. The Prosecutor considers that it is timely to start working on defining a framework to assist in the implementation of UNSC 1593 and the judicial decisions which have followed in relation to Darfur, and to enhance the cooperation of all parties concerned. The Prosecutor called upon all UN member States not to offer any political support, or financial aid to those individuals subject of an arrest warrant or to those protecting them and to sever all nonessential contacts with indictees.
- 3 July 2009 The Assembly of Heads of States of the African Union, meeting in Libya, “decide[d] that in view of the fact that the request [of deferral submitted to the Security Council] by the African Union has never been acted upon, the AU Member States shall not cooperate pursuant to the provisions of Article 98 of the Rome Statute of the ICC relating to immunities, for the arrest and surrender of President Omar Al Bashir of The Sudan” (13th Session, Assembly/AU/Dec. 245[XIII]). The African Commission has claimed publicly that Article 23 (2) of the Constitutive 2 Act of the African Union, which obligates all AU Member States “to comply with the decisions and policies of the Union”, AU Member states cannot be coerced to cooperate with the ICC as it would entail a breach to their obligations towards the Union. Chad did not join the consensus to this decision. At this meeting, the AU rejected the ICC request to open a liaison office at the AU headquarters in Ethiopia (13th Session, Assembly/AU/Dec. 245(XIII)).
- 14 July 2009 The Government of Ugandan issues a Press Release in relation to an invitation extended to the President of Sudan to attend the SMART Partnership Dialogue in Kampala. The statement affirms Uganda’s abidance to the obligations towards the ICC but refuses to adopt a condemnatory stance against President Al-Bashir. In the end, the President of Sudan did not attend the SMART meeting.
- 4 December 2009 10<sup>th</sup> OTP Report to the UN Security Council: The Prosecutor warns of the continued commission of crimes, and recalls the lack of action by the Council to enforce the obligations of Sudan under Resolution 1593 (2005).
- 15 March 2010 During the general debate on the 13th UN Human Rights Council, the EU reiterates the “call on the Sudanese authorities to conform to its obligations under the UN Security Council Resolution 1593 referring the situation in Darfur to the ICC.”
- 26 April 2010 The EU Council congratulates Sudan for the conduct of elections, but reaffirms its support to the ICC and calls on the Government of Sudan to cooperate with the ICC.

- 9 May 2010 In relation to the hosting by Uganda of the Review Conference of the Rome Statute, the government of Sudan expresses dissatisfaction over conferences related to the ICC being held on the African Continent, suggesting that this is weakening political decisions taken by African leaders.
- 25 May 2010 The Pre-Trial Chamber I, on the basis of UN Resolution 1593, *informs* the Security Council of the lack of cooperation of the Government of Sudan with respect to the enforcement of the Arrest Warrants against Ahmad Harun and Ali Kushayb. On 26 July 2010 Registry Representatives served the “Decision informing the United Nations Security Council about the Lack of Cooperation by the Republic of Sudan” to the Ambassador of the Republic of the Sudan to the Kingdom of the Netherlands. The Embassy did not accept the notification of the Decision of the Court and voiced his disapproval of the Court.
- 11 June 2010 11th OTP Report to the UN Security Council: In light of the existing framework for the Council’s action with respect to sexual violence as war crimes, the Prosecutor invites the Council to take measures to ensure that Ahmad Harun and Ali Kushayb, both charged with crimes of sexual violence as war crimes and crimes against humanity, are subject to individual measures that will isolate them in order to ensure their arrest and surrender to the ICC.
- 15 June 2010 The ICC issues summonses to appear for Abdallah Banda Nourain and Saleh Mohammed Jerbo in relation to charges for alleged war crimes committed in the context of attacks against the Haskanita UN base in Darfur.
- 12 July 2010 The ICC issues a second arrest warrant against President Al Bashir for charges of genocide.
- 26 July 2010 The EU Council, in addressing upcoming challenges with respect to the referenda process in South Sudan and Abyei, recalled “that war crimes, crimes against humanity and crimes of genocide are the most serious crimes of concern to the international community and that impunity for these crimes can never be accepted.” The Council reiterates its support for the ICC and “calls upon the Government of Sudan to cooperate fully with the ICC in accordance with its obligations under international law.”
- 21 July 2010 Omar Al-Bashir visits Chad, a State Party to the Rome Statute, to attend a meeting of the Community of Sahel-Saharan States. Media reports cite the Chadian Minister of Interior Ahmat Mahamat Bachir stating that Al-Bashir will not be arrested.
- 22 July 2010 In relation to the visit of Al-Bashir to Chad, Lady Ashton, EU High Representative, urges Chad to cooperate with the ICC.
- 27 July 2010 Meeting in Kampala, Uganda, just six weeks after the conclusion of the ICC Review Conference, the Assembly of Heads of States of the African Union, reiterate their decision of June 2009 instructing AU members not to cooperate with the ICC. The Resolution introduces new language requesting “Member States to balance, where applicable, their obligations to the AU with their obligations to the ICC” (para. 6). NGOs report of the failure of the AU Commission to introduce language that would sanction AU members that cooperate with the ICC. (Assembly/AU/10(XV))
- 30 July 2010 The UN Security Council renews the mandate of UNAMID until 31 July 2011. Through a preambular paragraph of **Resolution 1935**, it urges the Government of Sudan to comply with its obligations “to bring to justice perpetrators of violations of human rights and international humanitarian law.”

- 27 August 2010 Omar Al Bashir visits Kenya, a State Party to the Rome Statute, to attend the proclamation of the new Kenyan Constitution (which, inter alia, constitutionalises the Rome Statute principle of no-immunity for international crimes committed by Heads of States).
- 28 August 2010 ICC Pre-Trial Chamber I issues two decisions *informing* the Security Council of the United Nations and the Assembly of States Parties to the Rome Statute about Omar Al Bashir's visits to Kenya and Chad, "in order for them to take any measure they may deem appropriate."**
- 27 August 2010 In relation to the visit of Al-Bashir, Catherine Ashton, EU High Representative, urges Kenya to cooperate with the ICC.
- 28 August 2010 Amb. Christian Wenaweser, President of the Assembly of States Parties to the Rome Statute, sends letter to the Minister of Foreign Affairs of Kenya, Moses Wetangula referring to the decision of the ICC Pre-Trial Chamber on the clear obligation of Kenya to cooperate with the ICC on the arrest of Al Bashir and thus informing the Security Council and the ASP of the presence of Omar Al-Bashir on the territory of Kenya. Amb. Wenaweser requests Kenya to abide to its obligations under the Rome Statute.
- 29 August 2010 The Government of Kenya issues a Press Release reaffirming its commitment to cooperate with the ICC but noting that the invitation to Al-Bashir to the inauguration of the Constitution was made "to take advantage of the new momentum for peace in the sub-region to push forward the implementation of the Comprehensive Peace Agreement (CPA), which climaxes with the Referendum in January 2011." Through the Press Release, the Kenyan Government also invoked the AU Decisions which bindingly impeded them to cooperate with the ICC. The Press Release ignores the obligations of Kenya to execute the arrest warrant on the basis of Section 10 of the Kenyan International Crimes Act which entered into force on 1 January 2009.
- 1 September 2010 Media outlets report that several EU Foreign Ministers summoned the Ambassadors of Kenya in their respective countries to reiterate Kenya's obligation to cooperate with the ICC.
- 21 September 2010 In light of Kenya's failure to arrest Omar Al-Bashir in his visit to the country on 27 August, Amb. Christian Wenaweser, President of the ASP of the Rome Statute meets with the Foreign Affairs Minister of Kenya to underscore the obligation of Kenya to cooperate with the ICC.
- 25 October 2010 On the basis of reported information that Sudanese President Al Bashir would travel to Kenya to attend a meeting of the IGAD Heads of States, the ICC (PTC I) requests the Republic of Kenya to inform the Chamber, no later than 29 October, about any problem which would impede or prevent the arrest and surrender of Omar Al Bashir in the event that he visits the country on 30 October, 2010. In the end, the IGAD meeting of Heads of States does not take place in Kenya and is moved to another venue and date reportedly due to "logistical constraints."**
- 1 December 2010 ICC Pre-Trial Chamber I requests the Central African Republic to adopt all necessary measures to carry out the arrest warrant against Al Bashir, in accordance to its obligation as a State Party, should Mr. Al-Bashir visit the country.

- 10 December 2010 12th OTP Report to the UN Security Council: The Prosecutor indicates that he continues to monitor continued attacks against civilians, persons displaced and recruitment of children by all parties in the conflict in Darfur. Also, in light of the decisions on non cooperation issued by the ICC Judges, the Prosecutor recalls that the matter is in the hands of the UN Security Council.
- 13 January 2011 Amnesty International criticises the UN Secretary General's office and the UN Mission to Sudan for providing assistance to transport Ahmed Haroun.
- 11 May 2011 President Al-Bashir did not travel to Uganda for the swearing-in of President Museveni. Through a public statement, Ambassador Wenaweser, President of the Assembly of States Parties, stressed the importance that state parties fully cooperate with the Court.
- 12 May 2011 **The Pre-Trial Chamber I informs the Security Council of the lack of cooperation of the Government of Djibouti with respect to the enforcement of the Arrest Warrants against Omar Al-Bashir, in order for the SC to take any measure it may deem appropriate.**
- 8 June 2011 13th OTP Report to the Security Council: The ICC Prosecutor affirms that non-compliance with Resolution 1593 (2011) increases the risk that those who are object of ICC arrest warrants will commit more crimes. It further expresses that "it is the challenging task of the UN Security Council to harmonize the information exposed by the International Criminal Court intervention and the enforcement of the warrants of arrest, with the negotiations, the peacekeepers operation and the humanitarian assistance."
- 16 June 2011 After pressure from a number of Parliamentarians and civil society organizations which called on the Malaysian Government to withdraw an invitation to President Al Bashir, the Foreign Ministry of Malaysia announced that due to "pressing engagements", President Al-Bashir would no longer be able to travel to Malaysia.
- 14 October 2011 EU High Representative for Foreign Policy, Catherine Ashton expresses concerns at Malawi's failure to comply with its obligations under the Rome Statute by allowing Sudanese President Al Bashir in its territory for the purposes of a trade meeting.
- 19 October 2011 After a visit to Malawi by Omar Al Bashir and the refusal of said country to carry out the arrest warrant pending, the **ICC Pre-Trial Chamber I invites the competent authorities of Malawi to submit observations to the Report of the Registry, in particular replying to the alleged failure of Malawi to comply with the Cooperation Request issued by the Court.**
- 10 November 2011 The Embassy of Malawi in Belgium transmitted to the ICC the observations of the Republic of Malawi. The reports are considered confidential.
- 12 December 2011 **ICC Pre-Trial Chamber I decides that the Republic of Malawi failed to cooperate with the Court by not arresting and surrendering Omar Al Bashir to the Court during his visit to Malawi on 14 October 2011. The Chamber decided to refer the matter to the UN Security Council and the ASP to the Rome Statute. (ICC-02/05-01/09-139)**
- 13 December 2011 **ICC Pre-Trial Chamber I decides that Chad cannot invoke Article 98(1) of the Rome Statute to justify its lack of cooperation. Therefore, recalling its decision on the non cooperation of the Republic of Malawi of 12 December 2011 and affirming that there is no conflict between the obligations of States Parties to the Rome Statute towards the Court to arrest and surrender Al Bashir and their**

**obligations under customary international law, it *decides to refer this matter to the Security Council and the Assembly of States Parties (ICC-02/05-01/09-140)***

- 15 December 2011 14<sup>th</sup> OTP Report: the prosecutor once more highlights the lack of cooperation from the government of Sudan, the Governments of Chad and the Republic of Malawi. On the other hand, it showcases examples of cooperation by Kenya.
- 6 January 2012 In the case of *Banda and Jerbo*, the defence teams request a temporary stay of proceedings, citing the fact that neither the OTP nor the Defence are able to enter the Sudan as necessary for the preparation of the case. The Defence states that the Government of Sudan has made any cooperation with the Court a criminal offense, and that the "obstructionist efforts of the Government of Sudan have been absolute".
- 1 January 2012 The President of the ASP issued a respective letter to the Foreign Ministers of Chad and of Malawi in relation to the Pre-Trial Chamber decisions on non-cooperation. Amb. Intelmann requests these two states to provide a response on the matter by 27 January. The Response from Chad was received by the Court on 23 May (see below).
- 7 January 2012 Omar Al-Bashir travels to Libya as part of a two-day visit and was met by Mustafa Abdul Jalil, Chair of Libyas National Transitional Council at the airport.
- 9 January 2012 The AU Commission issues a press release noting with grave concern the decisions of the ICC in relation to the non-cooperation of Chad and Malawi. The Commission considers that Chad and Malawi, which are abiding by AU decisions and policies, are not at fault when they breached their legal obligations as states parties to the RS. The Commission calls on AU states to stop any attempts by the UNSC and ASP to sanction the two states for not abiding by their legal obligations.
- 30 January 2012 **The 18th Summit of the African Union concludes with a Decision on the progress report of the Commission on the Implementation of the Assembly decisions on the ICC. In it, the AU stresses the need to explore means to secure the deferral of proceedings against Omar Al-Bashir, but also regarding the situation in Kenya, and reiterates its request for deferrals to the UN Security Council. Moreover, the AU affirms that the Republic of Malawi, Djibouti, Chad and Kenya in refusing to arrest Al Bashir were implementing AU assembly decisions on non-cooperation with the ICC regarding the arrest and surrender of Omar Al Bashir. (Assembly/AU/Dec.391-415(XVIII))**
- 2 February 2012 **The 18th AU Heads of State Assembly, in Addis Ababa, discuss the report of the AU Commission on the implementation of decisions to delay the proceedings against President Al Bashir, and urge all its members to comply with the Assembly's decisions on non-cooperation with respect to the warrants of arrest issued by the ICC. Assembly/AU/Dec.397(XVIII)**
- 5 February 2012 The head of UN Darfur peacekeeping mission Ibrahim Gambari and Sudanese President Al-Bashir are seen talking at a wedding reception. Upon complaints by NGOs and ICC States Parties, the UN Secretary-General advises the former to avoid such encounters in the future.
- 6 February 2012 South Sudan President called on President Al Bashir to surrender to the ICC <http://www.sudantribune.com/South-Sudan-s-Kiir-unleashes,41526>
- 17 February 2012 The Council adopts **Resolution 2035 (2012)** whereby it demands the end of military action, including aerial bombardments, the end of sexual violence and indiscriminate attacks on civilians, expressed concerns on the obstacles to the work of the Panel of Experts and to that of UNAMID, and called for the Government of Sudan to



undertake effective efforts to ensure accountability for serious violations of international human rights and humanitarian law and to ensure unrestricted humanitarian access. The Council also regrets that some individuals affiliated with the Government of Sudan and armed groups in Darfur have continued to commit violence against civilians, impede the peace process, and disregard the demands of the Council.

- 1 March 2012 The ICC issues a fourth arrest warrant in relation to the situation in Darfur against Abdel Raheem Muhammad Hussein as alleged co-perpetrator in crimes against humanity and war crimes committed in 2003.
- 1 March 2012 On the basis of the procedures to deal with non-cooperation adopted by the ASP at its 10<sup>th</sup> session, the Bureau of the ASP meets at a special session in relation to Chad's and Malawi's non-cooperation with the ICC. The ASP decides to appoint regional focal points to assist the President of the ASP in her demarches. At the meeting, Ambassador Tiina Intelmann reported of her bilateral meetings with the Permanent Representative of Chad, and with two Presidents of the Security Council.
- 2 March 2012 The ASP President, Amb. Tiina Intelmann issues a letter to all states parties requesting to use their bilateral contacts with Chad to ensure its abidance with the obligations under the Rome Statute.
- 12 March 2012 Sudanese defence Minister, indicted by the ICC for crimes against humanity and war crimes visits Tripoli for a conference on border security. The conference is opened by Libya's interim Prime Minister Rahim al'Kib and National Transitional Council Chair Mustafa Abdel Jalil.
- 18 April 2012 In a public speech, President Al Bashir referred to the Sudan Peoples' Liberation Movement, the ruling party in Juba, as "insects" and said that the people of South Sudan needed to be freed from them.
- 24 April 2012 The Council, through a **Press Statement** condemns the 20 April attack against a police unit in Darfur and calls on the Sudanese government to bring those responsible to justice. ((SC/10623)
- 23 May 2012 The Minister of Foreign Affairs of Chad responds to the ICC in relation to the judicial finding on non-cooperation. In such letter, the actions of Chad are justified on the basis of the AU Decisions and on the need to balance the imperatives of peace and justice.
- 24 June 2012 President Joyce Banda announced officially that Malawi would arrest President Al Bashir if he attended the AU summit programmed for July in Lilongwe. This measure was supported by a parliamentary draft motion in the Parliament of Malawi submitted on June 3rd by PGA member Godfrey Kamanya, MP (opposition) which requests the government not accept the presence of Al Bashir in Malawi territory, inter alia, due to the obligations of cooperation with the ICC arising from the Rome Statute. The Summit was moved to Addis. Malawi refused to attend the session.
- 7 June 2012 Upon a Mission to Darfur, the UN independent expert on the situation of human rights in the Sudan confirms the continued to curtail fundamental rights and freedoms and the denial of humanitarian assistance outside South Darfur. Mr. Othman, the expert will present his findings to the September session of the Human Rights Council.
- 5 June 2012 15th OTP Report to the UN Security Council: The Prosecutor highlights the role of the Council in ending impunity and preventing the commission of new crimes. In it



the Prosecutor recalls that “whenever the Council has expressed itself forcefully, cooperation with the ICC has been forthcoming. Whenever the Council, and the international community at large, have failed to integrate the peace and justice requirements, the Government of the Sudan has rejected cooperation”. The Prosecutor indicates that the obligation to ensure compliance falls on the collective community of States. The Prosecutor proposed the Council to evaluate asking UN Member States or regional organizations to execute arrest operations in furtherance of the arrest warrants issued by the International Criminal Court.

### ***2.3 Democratic Republic of Congo***

- 2003 Through a number of Resolutions in relation to the need to address violence against women and girls as warfare in the DRC, which call upon the need to bring those responsible of atrocities and violations to IHL, the Council fails to make a reference to the ICC jurisdiction.
- 31 March 2006 Pre-Trial Chamber I requests States Parties to the Statute to take all necessary measures to identify, trace, freeze and seize the property and assets of Thomas Lubanga Dylo. The decision of the single-Judge takes into consideration that Mr. Lubanga is in the list of individuals subject to specific sanctions pursuant SC Resolution 1596 (2005).
- 12 December 2008 The report of the Group of Experts on the DRC, published in December 2008 found that Laurent Nkunda’s party was complicit in human rights abuses, including sexual violence and recruitment of child soldiers during the five-year rebellion in eastern Congo. The ICC has not indicted Laurent Nkunda. (S/2008/773)
- 28 June 2011 The UN Security Council in its **Resolution 1991 (2011)** stresses the importance of the efforts at accountability by the Congolese government and their cooperation with the ICC.
- 29 November 2011 The UN Security Council adopts **Resolution 2012 (2011)** in which it stresses the need to renew arms embargo and related sanctions against DRC and the importance of accountability, including through cooperation with the ICC.
- 16 March 2012 The Security Council through its President issues a **Press Statement** in relation to the verdict against Thomas Lubanga issued by the ICC. The statement recognises the importance of the judgement for the victims of the crimes committed by Mr. Lubanga. (UN Doc. SC/10580)
- 27 June 2012 Acting under Chapter VII of the UN Charter, the Security Council adopts **Resolution 2053**, which inter alia, renews and expands the mandate of the UN Mission in the DRC, MONUSCO. Through this resolution, the SC stresses the importance of the Congolese Government actively seeking to hold accountable those responsible for war crimes and crimes against humanity in the country and of regional cooperation to this end, including through cooperation with the International Criminal Court (para. 13). In addition the Council, reiterates the urgent need for swift prosecution of all perpetrators of human rights abuses and international humanitarian law violations, in cooperation, inter alia, with the ICC (preamble).
- 6 July 2012 The Council issues a **Press Statement** (Colombian Presidency) condemning the attacks to MONUSCO by the M23 rebel group in Eastern DRC. The statement calls

on bringing the perpetrators of international crimes to justice. *It makes no reference to the ICC jurisdiction over the DRC especially concerning attacks against peacekeepers as war crimes.* (SC/10702)

- 13 July 2012 The ICC issues an arrest warrant against Sylvestre Mudacumura for allegedly committing war crimes in the Kivus, between 2009 and 2010. Mudacumura, a Rwandan national has been listed since 2005 pursuant to Resolution 1596 (2005) in the Security Council's Consolidated Travel Ban and Assets Freeze List *inter alia* for its linkages to 27 cases of recruitment or use of children in hostilities. The ICC also issues a second arrest warrant against Bosco Ntaganda. The Pre-Trial Chamber requests the Registrar of the Court "to liaise with the Prosecutor in order to invite the Kingdom of The Netherlands and the DRC to request an exemption from the travel ban imposed by the UN Security Council and the Council of the EU to allow the surrender of Sylvestre Mudacumura to the Court and to enter the territory of The Netherlands."
- 14 July 2012 The Council issues a **Press Statement** (Colombian Presidency) on the situation in Eastern DRC condemning the escalation of violence that has included sexual abuses and recruitment of children. There is no reference to the ICC jurisdiction over the DRC, of outstanding arrest warrants or to the need of accountability through domestic proceedings. (SC/10709)
- 16 July 2012 Through a **Press Release** the Council condemns the violence in Eastern Congo by the M23 rebel group. The Press release refers to the outstanding arrest warrant issued by the ICC against Bosco Ntaganda. ([www.un.org/apps/news/story.asp?NewsID=42487&Cr=democratic&Cr1=congo](http://www.un.org/apps/news/story.asp?NewsID=42487&Cr=democratic&Cr1=congo))

#### **2.4 Libya**

- 26 February 2011 Security Council **Resolution 1970** refers the situation of Libya to the ICC and imposes an obligation of cooperation on the authorities of Libya. It specifies however that states not parties to the Rome Statute do not have an obligation to cooperate with the Court.
- 9 March 2011 The UNSG's Special Representative for Children and Armed Conflict, Radhika Coomaraswamy noted having received reports from numerous sources of the killing and maiming and use of children as combatants and the denial of humanitarian access in Libya.
- 20 April 2011 The UN High Commissioner for Human Rights, Navi Pillay, condemned the reported repeated use of cluster munitions and heavy weaponry by Libyan government forces in their attempt to regain control of Misurata, noting that the deliberate targeting of medical facilities is a war crime, and the deliberate targeting or reckless endangerment of civilians may also amount to serious violations of international humanitarian law.
- 4 May 2011 1<sup>st</sup> OTP Report to the UN Security Council, pursuant to Resolution 1970 (2011): The Prosecutor announced the forthcoming request for arrest warrants in relation to Libya focusing on those bearing the greatest responsibility.
- 27 June 2011 ICC Pre-Trial Chamber I, noting Resolution 1970, issued three warrants of arrest for Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi for crimes against humanity allegedly committed across Libya from 15 until at least 28 February 2011, through the State apparatus and Security Forces.
- 18 July 2011 The EU Foreign Affairs Council Meeting condemns the violations of human rights perpetrated in Libya. It reiterates the importance of accountability and it takes note of the ICC arrest warrants, calling for full cooperation with the Court.

- 16 September 2011 Security Council **Resolution 2009 (2011)** recalls once more its decision to refer the situation in Libya to the International Criminal Court and decides to establish the United Nations Support Mission in Libya (UNSMIL). The mandate of UNSMIL does not comprise the execution of ICC arrest warrants.
- 20 October 2011 Muammar Gaddafi is killed. There are no indications that there were attempts to preserve his life in order to execute the arrest warrant of the ICC.
- 27 October 2011 Security Council **Resolution 2016 (2011)** which decides to terminate as of 31 October 2011 the no-fly zone on Libya, and other measures for the protection of civilians, recalls the decision to refer the situation in Libya to the ICC.
- 2 November 2011 2nd OTP Report to the UN Security Council, pursuant to Resolution 1970 (2011): The Prosecutor highlights the substantial cooperation received from States Parties and non States Parties alike, as well as from the UN, Interpol, and other organizations. The Prosecutor emphasized the importance of cooperation requests in relation to assets and proceeds of crimes as they will also allow in the longer term for reparations to victims in accordance with the Rome Statute. The Prosecutor informed that he is considering whether further arrest prosecutions are warranted in the situation.
- 19 November 2011 Saif al-Islam is captured in Libya by a Zintan-based militia. He remains incommunicado in Libya.
- 2 December 2011 The Security Council adopts **Resolution 2022 (2011)** whereby it extends the UNSMIL mandate. The Resolution recalls resolution 1970, but does not make an explicit reference to the ICC.
- 23 January 2012 Submission by Libya on a question posed by Pre-Trial Chamber-I on whether Saif Al-Islam Gaddafi would be surrendered to the Court. The response is confidential.
- 16 March 2012 Abdullah Al-Senussi, former intelligence chief and the late Col. Muammar Qaddafi's brother-in-law, was arrested in Mauritania upon arrival on a flight from Morocco. Soon thereafter, his extradition was separately requested by Libya, France and its surrender by the ICC.
- 20 March 2012 The Panel of Experts on the Situation in Libya pursuant to Resolution 1973 (2011) reports to the Security Council the petition made by NTC to the ICC to try Saif al-Islam in Libya.
- 12 April 2012 Xavier-Jean Keita , Head of Office of Public Counsel for the Defence (OPCD) of the ICC, calls on the Court to make a formal complaint to the Council over Libya's refusal to hand over Saif al-Islam Qaddafi.
- 1 May 2012 The Government of Libya files an admissibility challenge in the case of Saif Al Islam Gaddafi on the basis of the principle of complementarity. In response, the Court directs the Registrar to inform the Security Council of the challenge and invites the Security Council to submit observations, if any, by 4 June 2012.
- 2 May 2012 Libya adopts Law 38 on "Some Procedures for the Transitional Period" granting a blanket amnesty for any act committed with the goal of promoting or protecting the revolution.
- 16 May 2012 3rd OTP Report to the UN Security Council pursuant to UNSCR 1970 (2011): The Prosecutor reports of compliance to his requests for cooperation and its plans to continue its ongoing investigation and to continue its evaluation of Libya's efforts in order to ensure that justice is done in Libya. The Prosecutor informs the Council of

the challenges to admissibility. In the interactive debate, some Council members affirm the need that any proceeding should follow international standards.

- 1 June 2012 PTC-I allows the postponement of the request of surrender of Saif Al-Islam Gaddafi pending the final determination on Libya's challenge to the admissibility of the case.
- 7 June 2012 In accordance with the Pre-Trial Chamber I decision, dated 27 April 2012, a delegation of the ICC travels to Libya on Wednesday, 6 June, to meet with Saif Al-Islam Gaddafi in Zintan, through a privileged visit by the Office of Public Counsel for the Defence, currently appointed to represent Mr Gaddafi in the case brought against him. The Defence Counsel and her interpreter are detained amid accusations of threats to the national security of Libya.
- 12 June 2012 Through a letter, the ICC President informs the Security Council of the detention of four staff members in Libya. (S/2012/440)
- 15 June 2012 The President of the Security Council (China) issues a **Press Statement** expressing concern over the detention in Libya since 7 June 2012 of the ICC staff members, and urging Libyan authorities at all levels and all concerned to work towards immediate release of all the ICC staff members. The members of the Security Council emphasise that it is the legal obligation of Libya under the Council's resolution 1970 (2011) to cooperate fully with and provide any necessary assistance to the ICC pursuant to that resolution. (SC/10674)
- 2 July 2012 The Libyan authorities release the four ICC staff members who were detained in Zintan, following their visit to Saif Al-Islam Gaddafi on 7 June. The ICC President confirms that the information reported by the Libyan authorities on the visit's circumstances will be fully investigated in accordance with ICC procedures following the return, scheduled for today, of the ICC staff members to The Hague.
- 11 July 2012 The Security Council issues a **Press Release** welcoming the holding of elections in Libya and labelling them as a "milestone for Libya's democratic transition". The release makes reference to the need to address the causes of conflicts and protect civilians. *It makes no reference to the ICC and the ongoing obligations of Libya arising from Resolution 1970.*

## **2.5 Uganda - LRA**

- 16 December 2003 The government of Uganda refers the situation of the LRA to the ICC. On 29 July 2004 the Prosecutor opened an investigation in Uganda.
- 8 July 2005 The ICC issues arrest warrants for alleged crimes against humanity and war crimes committed by a number of leaders of the LRA.
- 27 January 2006 The UN Security Council adopts **Resolution 1653 (2006)** and condemns the operations of the LRA and calls on "all States concerned to take action to bring to justice perpetrators of grave violations of human rights and international humanitarian law."
- 19 April 2006 Uganda's Foreign Affairs Minister briefs the Security Council on proposals for demobilization of LRA members, including cooperation with the ICC for the execution of arrest warrants against the LRA leaders
- 6 October 2006 The Prosecutor reports to the Pre-Trial Chamber that despite the reports on negotiations between the Government of Uganda and the LRA there has been no refusal to cooperate with the ICC.

- 29 June 2007 The Government of Uganda and the LRA sign the Juba Agreement on Accountability and Reconciliation. In its preamble, the agreement recalls the provisions of the Rome Statute and the complementarity nature of the ICC. The Agreement obliges the government to “address conscientiously the question of the arrest warrants relating to the leaders of the LRA Movement” (para. 14.6). An Annexure to Article 4 of the Agreement on Accountability and Reconciliation signed between the Government of Uganda and the LRA is adopted in 2008 providing for a Special Division of the High Court to try perpetrators of serious international crimes. On 10 April 2008, the Ceremony of the Signing of the Peace Agreement is set to take place. Joseph Kony does not attend the ceremony.
- 18 June 2008 The Pre-Trial Chamber II of the ICC requests the Government of Uganda for information on the status of the Execution of the Arrest Warrants against LRA leaders.
- 21 October 2008 In light of information that the LRA has been for the past three year stationed in the Garamba National Park in the DRC, the Pre-Trial Chamber II of the ICC requests the Government of the DR Congo for information on the status of the Execution of the Arrest Warrants against LRA leaders who may be found in the territory of the DRC.
- 21 October 2008 The Security Council adopts **Presidential Statement 2008/38** in which it “strongly condemns the recent attacks by the Lord’s Resistance Army (LRA), including the abduction of 159 schoolchildren in villages in the Oriental Province. The Council recalls the International Criminal Court indictments against members of the LRA leadership on charges of, among other things, the enlistment of children through abduction, as a war crime.”
- 18 November 2008 Upon request of information by the Pre-Trial Chamber, the Government of Uganda reports to the ICC that due to the failure to sign the Peace Agreement with the LRA, rendering the Protocols of the Agreement on Accountability and Reconciliation invalid, the Government will not challenge the admissibility of the cases against the LRA at the ICC.
- 22 December 2008 The Security Council adopts **Presidential Statement 2008/48** in which it “recalls the International Criminal Court arrest warrants for certain LRA leaders on charges of, among other things, war crimes and crimes against humanity, including murder, rape and the enlistment of children through abduction.” In it, the Council also “recalls its statement of June 2006 (PRST/2006/28) [and] reaffirms that it attaches vital importance to promoting justice and the rule of law, including respect for human rights, as an indispensable element for lasting peace. The Council reaffirms that ending impunity is essential for a society recovering from conflict to come to terms with past abuses committed against civilians and to prevent their recurrence.”
- 2 May 2010 The UN Under-Secretary General for Humanitarian Affairs, on a visit to the DRC states that the solution to the LRA “reign of terror” should not only be local but also involve the UN Security Council.
- 18 May 2011 The Security Council adopts **Presidential Statement 2011/11** on the situation in the DRC whereby it states its deep concern about continuing activities by the LRA in Congo and called for an end to attacks on civilians by all armed groups.
- 21 July 2011 The Security Council through a **Press Statement** condemns the ongoing attacks carried out by the Lord’s Resistance Army (LRA) across central Africa. It recalls the arrest warrants issued by the ICC against LRA leaders and calls upon cooperation with the AU to react to the threat posed by the LRA. (SC/10335)



- 14 October 2011 At a meeting in Bangui organised by Parliamentarians for Global Action in the plenary of the National Assembly of the Central African Republic, the entire National Assembly adopts the Bangui Declaration for Justice and the Rule of Law, which *inter alia* supports an AU initiative for a joint arrest operation of LRA members, and calls on the military support by the US, France, the EU and any other relevant stakeholders to this effort. See: [www.pgaction.org/pdf/pre/Declaration%20ENG%20PGA%20CAR%20final.pdf](http://www.pgaction.org/pdf/pre/Declaration%20ENG%20PGA%20CAR%20final.pdf)
- 4 November 2011 The UN Secretary General reported to the Security Council that Joseph Kony, Okot Odhiambo and Dominic Ongwen are still actively involved in the atrocities committed by the LRA. (UN Doc. S/2011/693).
- 14 November 2011 The Security Council adopts **Presidential Statement 2011/21** related the ICC's arrest warrants for the LRA leaders where it encourages all states to cooperate with the Ugandan authorities and with the ICC to implement the warrants. The Statement calls for coordination with the AU and request the Secretary-General more information on the initiative.
- 22 November 2011 The AU Peace and Security Council (PSC) authorised the implementation of the Regional Cooperation Initiative for the Elimination of the LRA (RCI-LRA) for an initial period of six months. The initiative is composed of a Joint Coordination Mechanism, a Regional Task Force with 5,000 soldiers and a Joint Operations Center with 30 officers under the authority of the RTF. The PSC also declares the LRA a terrorist group and requests that the Security Council do the same. On 24 March the operational phase of the RCI-LRA is launched in a ceremony in Juba, South Sudan.
- 22 May 2012 The AU initiative against the LRA is renewed for another 12 months. The PSC invites the Security Council and the Secretary-General to assist the initiative through the peacekeeping mission in the region, including by adjusting, if necessary, the mandates of these missions.
- 11 June 2012 The Report of the Secretary-General to the Security Council on the activities of the United Nations Regional Office for Central Africa and on areas affected by the Lord's Resistance Army documents the recent activities of the LRA including the continued attacks against civilian population comprising the abduction of children. The report describes the efforts of the AU to deal with the LRA threat. It makes no recommendations to the Council. It does not make a reference to the outstanding arrest warrants issued by the ICC. (S/2012/421)
- 29 June 2012 The Security Council adopts **Presidential Statement S/PRST/2012/18** in which it welcomes the effort to deal with the threat created by the LRA. In it, it recalls the existing arrest warrants of the ICC against LRA leaders and request the UNSG to provide a report of situation and coordination with the AU before 30 November 2012.

### ***2.6 Cooperation not situation-specific***

- 28 August 2003 The Security Council adopts **Resolution 1503 (2003)** in relation to the ad hoc tribunals in which it notes that "full cooperation by all States" is "an essential prerequisite to achieving the [tribunal's] objectives." The Council urges "Member States to consider imposing measures against individuals and groups or organizations assisting indictees at large to continue to evade justice, including measures designed to restrict the travel and freeze the assets of such individuals, groups, or organizations".
- 22 July 2004 The Negotiated **Agreement between the UN and the ICC** enters into force.



- 28 October 2007 In his report on the protection of civilians in armed conflict, the UN Secretary-General calls on all Member States to cooperate fully with the International Criminal Court, and other international mechanisms addressing genocide, war crimes and crimes against humanity, and calls on the Council to take appropriate steps to encourage and facilitate such cooperation when it is not otherwise forthcoming. (S/2007/643)
- 29 May 2009 In his report on the protection of civilians in armed conflict, the UN Secretary-General recommends the Council to insist that Member States cooperate fully with the International Criminal Court and similar mechanisms; and to enforce such cooperation, as necessary, through targeted measures. (S/2009/277)
- 10 December 2010 The Assembly of States Parties adopts the Omnibus resolution that in paragraph 12 “recognizes the negative impact that the non-execution of Court requests can have on the ability of the Court to execute its mandate, and requests the Bureau to prepare a report on which Assembly procedures could be required to enable it to discharge its mandate to consider any question relating to non-cooperation and to submit that report to the Assembly for consideration at its tenth session.” (ICC-ASP/9/Res.1).
- 20 December 2011 Through Resolution 5, the ASP emphasises the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation to cooperate with the Court pursuant to Part 9 of the Rome Statute or a United Nations Security Council resolution, as the failure to provide such cooperation in the context of judicial proceedings affects the efficiency of the Court. Through this Resolution, the ASP also adopts procedures to address instances on non-cooperation.** (See Annex to Resolution 5)
- 19 January 2012 The Security Council adopts **Presidential Statement 2012/1** in which it recalls its statement 2010/11, which recognises the contributions of the ICC as well as ad hoc and mixed tribunals and chambers in national tribunals to fight impunity. The Council reiterates its previous call on the importance of state cooperation with these Courts, in accordance with the states’ respective obligations.
- 27 February 2012 ICC States Parties join consensus to insert paragraph 5bis in the Draft Resolution on the ICC adopted by the UN General Assembly at the forthcoming session:  
*“5bis. Requests the Secretary-General to ensure, consistent with the existing UN policies and pursuant to the Relationship Agreement, that United Nations field presences and representatives, especially peacekeeping operations, special political missions, special envoys, special representatives and mediators, refrain from any action, including the use of resources, that could undermine the efforts of the International Criminal Court, and requests the Secretary-General to submit a report on the application of such policies for the consideration of the General Assembly at its sixty-seventh session.”*
- 5 July 2012 The Council issues a **Press Statement** (Colombian Presidency) on the contributions of Courts and tribunals to the fight against impunity for the most serious crimes. It notes the 10<sup>th</sup> Anniversary of the ICC. (SC/10700)

## **2.7 Financing of the Court**

### **Rome Statute**

#### **Article 115**

a) The expenses of the ICC are covered by annual assessed contributions from the states that are parties to it. The ICC is not part of the United Nations, so its funding does not come from the regular budget of the United Nations.

b) Financial support for the Court from the United Nations, subject to the approval of the General Assembly, in particular for expenses arising in relation to referrals from the Security Council.

#### **Article 116**

The Court may receive and utilize, as additional funds, voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.

### **UN-ICC Negotiated Agreement**

#### 13. Financial matters:

1. The United Nations and the Court agree that the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations pursuant to article 115 of the Statute shall be subject to separate arrangements. The Registrar shall inform the Assembly of the making of such arrangements.

2. The United Nations and the Court further agree that the costs and expenses resulting from cooperation or the provision of services pursuant to the present Agreement shall be subject to separate arrangements between the United Nations and the Court. The Registrar shall inform the Assembly of the making of such arrangements.

3. The United Nations may, upon request of the Court and subject to paragraph 2 of this article, provide advice on financial and fiscal questions of interest to the Court.

### **Security Council Resolution 1593 (2005):**

7. Recognizes that none of the expenses incurred in connection with the referral including expenses related to investigations or prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily.

### **Security Council Resolution 1973 (2011):**

8. Recognizes that none of the expenses incurred in connection with the referral, including expenses related to investigations or prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily.

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18 January 2002

The General Assembly decides that expenses that may accrue to the United Nations as a result of the implementation of the request contained in paragraph 9 above, as well as expenses resulting from the provision of facilities and services for the meeting of the Assembly of States Parties and any consequent follow-up shall be paid in advance to the Organization, for which an appropriate mechanism will be set up in the near future. Language replicated in subsequent resolutions.

- 17 June 2011 At its sixteenth session, the Committee on Budget and Finance of the ASP noted that one of the cost-drivers that would have a significant impact upon the Court's budget is the cost of United Nations Security Council referrals. It states: "In the case of the referral of the situation in Libya, the tentative estimate by the Court at 11 April 2011 of the programme budget implications for major programme II alone was approximately €2 million for the current year; this amount would be increased with the yet to be quantified costs to be incurred by other major programmes. Although the Court would most likely resort to the Contingency Fund in 2011, the costs of the Libya situation would be part of the regular budget in the coming years." (para. 21). The CBF also "noted that the central role played by the Court in international criminal justice brought benefits to the entire international community and suggested that the Assembly may wish to consider engaging with the United Nations General Assembly to explore options to cover the financial burden of future referrals." (para. 22)
- 2 November 2011 In Reporting to the Security Council on the situation in Libya, and in response to the requests by a number of member states to expand the investigations committed by all sides of the conflict, the Prosecutor warned on the dependency of funds to continue investigations:  
"My office will continue investigations into Saif Al-Islam Gaddafi and Abdallah Al-Senussi and into rapes and in May will evaluate the possibility for further investigations. I should clarify that the possibility to carry out all of these investigations will depend on the budget available to the Office. This is a matter currently under discussion and it will be decided during December 2011 in the upcoming session of the Assembly of States Parties."
- 18 November 2011 At its seventeenth session, the Committee on Budget and Finance reports on the notification made by the Court to access the Contingency Fund for the amount of €4 million in 2011 for the Libya referral. In the 2012 proposed programme budget, the Court had identified a need for €7.2 million to cover the Libya situation in 2012 with €5.2 million apportioned to the Office of the Prosecutor and €1.9 million apportioned to the Registry.  
The CBF proposed that "given the uncertainties [in relation to the developments in Libya], the Assembly take a step approach to the funding for Libya. In that regard, the Committee recommended that, the Prosecutor assess events on the ground and re-evaluate the needs of the Office of the Prosecutor (the Registrar would also, by consequence, reevaluate requirements in the Registry) prior to the tenth session of the Assembly to determine if the requested resources are still required at the same level or whether further reductions on the 2012 proposed budget for the Libya situation can be made." (paras. 84-86, ICC-ASP/10/15)
- 21 December 2011 In approving the 2012 budget of the Court (Euros 108.8 million) through Resolution 4, the ASP also invites the Court to engage in institutional dialogue with the United Nations on the financial implications of Resolutions 1593 and 1970 and on the legal framework that requires separate arrangements between the Court and the United Nations for funds to be provided to the Court. The Court is requested to report on this matter at the next session of the ASP.
- 27 February 2012 Japan convenes a meeting to insert paragraph 10bis in the Draft Resolution on the ICC adopted by the UN General Assembly at the forthcoming session:

*The proposal “invites all States that wish to do so to contribute voluntarily to the bearing of expenses related to investigations or prosecutions in connection with situations referred to the Court by the Security Council, in accordance with agreed modalities for such contributions, and requests the Secretary-General to include the matter of article 115 (b) of the Rome Statute and article 13, paragraph 1, of the Relationship Agreement in its institutional dialogue with the International Criminal Court and to include such information in its report to the General Assembly pursuant to paragraph 10 of the present resolution.”*

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### 3. HIGHLIGHTS IN RELATION TO REQUESTS BY THE SECURITY COUNCIL TO THE ICC TO DEFER PROCEEDINGS UNDER ARTICLE 16 OF THE ROME STATUTE

#### **Rome Statute Article 16** Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

#### **Security Council Resolution 1593 (2005):**

...

*Recalling* article 16 of the Rome Statute under which no investigation or prosecution may be commenced or proceeded with by the International Criminal Court for a period of 12 months after a Security Council request to that effect, [...]

#### **Security Council Resolution 1973 (2011):**

...

*Recalling* article 16 of the Rome Statute under which no investigation or prosecution may be commenced or proceeded with by the International Criminal Court for a period of 12 months after a Security Council request to that effect, [...]

#### **3.1 Central African Republic**

1 August 2008            Having referred to the ICC the situation on the Central African Republic (CAR) on 7 January 2005, only a month after the transfer of Jean-Pierre Bemba to The Hague, the President of CAR writes to the Secretary-General of the United Nations to request him to, “*on the basis of Article 16, intercede with the Security Council to obtain the adoption of a resolution that would ensure that the authorities of the Central African Republic remain competent over the acts covering the periods comprised by the amnesty laws*” adopted on the basis of Article 2 of the Comprehensive Peace Agreement signed between the government of the CAR and three rebel groups on 21 June 2008. The request by President Bozizé was, according to his letter, prompted by a communication from the Prosecutor of the ICC that stated that the Office of the Prosecutor was placing special attention on ongoing acts of violence taking place in the north of the Central African Republic.

#### **3.2 Darfur**

31 March 2005            Acting under Chapter VII of the UN Charter, the Security Council adopts **Resolution 1593**. The preamble of the Resolution recalls Article 16 of the Statute.

21 July 2008            At its 142nd Meeting, the Peace and Security Council of the African Union adopts a Communiqué in which it requests the Security Council to use Article 16 of the Rome Statute to defer the investigations of the ICC on Darfur (See also UN Doc S/2008/481). Through this Communiqué, the Peace and Security Council argues that:

“The approval by the Pre-Trial Chamber of the application by the ICC Prosecutor could seriously undermine the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur and the promotion of long-lasting peace and reconciliation in the Sudan as a whole and, as a result, may lead to further suffering



for the people of the Sudan and greater destabilization with far-reaching consequences for the country and the region.”

- 31 July 2008 In debating the establishment of UNAMID, Libya argues at the Security Council in support of the request from the Peace and Security Council of the AU. In **Resolution 1828 (2008)**, the Security Council acknowledges the request and decides to consider the matter further.
- 3 February 2009 The AU Assembly decides at its twelfth session to reinstate its request to the Council to defer the process initiated by the ICC against the President of Sudan. (Doc. Assembly/AU-/Dec.221(XII)).
- 1 July 2009 The AU Assembly decides at its thirteenth session to reinstate its request to the Council to defer the process initiated by the ICC against the President of Sudan. (Doc. Assembly/AU-/245(XIII) Rev. 1).
- 4 March 2009 The League of Arab States, Council of Ministers, meets in Emergency Session and adopts a resolution on the decision of the Pre-Trial Chamber I to the International Criminal Court against the President of Sudan, Al-Bashir, 4 March 2009. In it the Arab League Council “expresses regret that the Security Council was not able to invoke Article 16 of the Rome Statute to delay the action taken by the International Criminal Court.”
- 27 April 2009 Mr. Rodolphe Adada, Joint African Union-United Nations Special Representative for Darfur and head of the African Union- UN Hybrid Operation in Darfur expresses that “the political process in the Sudan has apparently frozen, in particular after the decision of the International Criminal Court (ICC) to issue an arrest warrant for President Omer Al-Bashir. The ICC issue has dominated and polarized Sudanese political life. It has weakened the position of those in the Sudan who have been working for compromise and consensus and has encouraged militant sentiment on both sides.” (S/PV.6112)
- November 2009 In preparation to the Review Conference of the Rome Statute, South Africa on behalf of the States Parties to the Rome Statute that are also members of the African Union circulates a proposal to the Working Group on the Review Conference to amend Article 16 of the Rome Statute. The proposal reaffirms the powers of the Council for deferral (paragraph 1), seeks to grant the state concerned the capacity to request the Security Council a deferral (paragraph 2), and regulates how the General Assembly, under the Uniting for Peace Resolution procedure, could make a decision making concerning a deferral (paragraph 3). The proposal did not gather sufficient support for consideration by the Review Conference. It remains as stand-by agenda item at the ASP Working Group on Amendments.
- 2 February 2010 The AU Assembly decides at its fourteenth session to reinstate its request to the Council to defer the process initiated by the ICC against the President of Sudan. (Doc. Assembly-/AU/8(XIV)).
- 27 July 2010 The AU Assembly decides at its fifteenth session to reinstate its request to the Council to defer the process initiated by the ICC against the President of Sudan. (Doc. Assembly/AU/10(XV)).
- 29 August 2010 The African Commission of the AU issues a press release rejecting the decision of the Pre-Trial Chamber of the International Criminal Court informing the Security Council and the Assembly of States parties to the Rome Statute about the presence of President Omer Hassan Al-Bashir of the Sudan in the territories of the Republic of Chad and the Republic of Kenya.

- 31 January 2011 The AU Assembly decides at its sixteenth session to reinstate its request to the Council to defer the process initiated by the ICC against the President of Sudan and in Kenya. (Doc. Assembly/AU/334(XVI)).
- 1 July 2011 The Government of Sudan and the Liberation and Justice Movement sign the Doha Document for Peace in Darfur. In its preamble, the agreement stresses “the necessity to promote and protect human rights, justice, accountability and reconciliation in Sudan, and in particular in Darfur.” The Document although does not mention the ICC and favours transitional justice mechanisms, contains the agreement of “ensuring that all perpetrators of violations of human rights and international humanitarian law are held accountable.”

### **3.3 Kenya**

- 29 August 2010 The African Commission of the AU issues a press release rejecting the decision of the Pre-Trial Chamber of the International Criminal Court informing the Security Council and the Assembly of States parties to the Rome Statute about the presence of President Omer Hassan Al-Bashir of the Sudan in the territories of the Republic of Chad and the Republic of Kenya.
- 31 January 2011 The AU Assembly decides at its sixteenth session to reinstate its request to the Council to defer the process initiated by the ICC against the President of Sudan and in Kenya. (Doc. Assembly/AU/334(XVI)).
- 8 February 2011 The Permanent Mission of the Republic of Kenya at the UN issues an aide-memoire regarding Kenyan engagement with the ICC. The document presents the government’s case for deferral.
- 4 March 2011 The Permanent Mission of the Republic of Kenya at the UN writes to the President of the Security Council requesting an Article 16 deferral of one year regarding the investigation opened by the OTP. Kenya claims that the ICC process would threaten the country’s and the region’s peace and security but also that they should be allowed time to set up a national mechanism to prosecute cases under a reformed judiciary.
- 18 March 2011 The Council organises an **Interactive Dialogue** to consider the deferral of the investigations and prosecutions at the ICC on the basis of Article 16 of the Rome Statute, which reportedly led to the concurrence that “the conditions of the implementation of Article 16 are not fulfilled.”
- 29 March 2011 A letter from the Kenyan Representative to the UN requests the Council to hold an open meeting to further consider the request for deferral. The Letter reaffirms that Kenya enjoys the support of both sides of the coalition Government for the deferral (UN Doc. S/2011/201).
- 8 April 2011 **The President of the Security Council**, Amb. Osorio (Colombia) announces that “*after full consideration the members of the Security Council did not agree on the matter*” of the deferral by the Council of the investigations and prosecutions of the ICC on the situation in Kenya.
- 30 May 2011 ICC Pre-Trial Chamber II rejects the request for an Article 19 admissibility challenge by the Kenyan government as it presented no concrete evidence of taking internal steps to bring those responsible for the violence to trial.
- 1 July 2011 During its 17th Summit, the African Union adopts a decision to endorse Kenya’s request for a deferral pursuant to article 16 of the Rome Statute of the ICC’s cases involving Al-Bashir, Kenya, and expresses deep concern at the manner in which the

- OTP is handling the situation in Libya which, according to the AU complicate the efforts aimed at finding negotiated solutions. (Assembly/AU/Dec.366(XVII))
- 30 August 2011 ICC Appeals Chamber rejects the application from the government of Kenya to for dismissal of the cases.
- 23 January 2012 Pre-Trial Chamber confirms the charges for William Samoei Ruto and Joshua Arap Sang and Francis Kirimi Muthaura and Uhuru Muigai Kenyatta. Pre-Trial Chamber II declines to confirm the charges against Mr. Kosgey and Mr. Ali.
- 30 January 2012 The 18th Summit of the African Union concludes with a Decision on the progress report of the Commission on the Implementation of the Assembly decisions on the ICC. In it, the AU stresses the need to explore means to secure the deferral of proceedings against Omar Al-Bashir, but also regarding the situation in Kenya, and reiterates its request to the UN Security Council. Moreover, the AU affirms that the Republic of Malawi, Djibouti, Chad and Kenya in refusing to arrest Al Bashir were implementing AU assembly decisions on non-cooperation with the ICC regarding the arrest and surrender of Omar Al Bashir. (Assembly/AU/Dec.391-415(XVIII))
- 31 January 2012 The leaders of the AU at the summit in Addis Ababa ask the Chairperson to consider seeking the opinion of the ICJ regarding the immunity of state officials under international law. (Assembly/AU/Dec.397 (XVIII))

### **3.4 Libya**

- 17 March 2011 Acting under Chapter VII of the UN Charter, the Security Council adopts **Resolution 1970** referring the situation of Libya to the ICC. The preamble of the Resolution recalls Article 16 of the Statute.

### **3.5 Deferral not situation-specific**

- 12 July 2002 Upon proposal by the United States, the Security Council adopts **Resolution 1422 (2002)** in which, *acting* under Chapter VII of the Charter of the United Nations, *requests*, consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorised operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise.<sup>1</sup>
- 12 July 2003 Upon proposal by the United States, the Security Council adopts **Resolution 1487 (2003)** in which, *acting* under Chapter VII of the Charter of the United Nations, renews its decision to *request*, consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorised operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise. June 2004, not having obtained the necessary support for adoption at the Council, the US withdraws its draft resolution to renew Resolution 1487(2003) for other 12 months.

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<sup>1</sup> *Commentary by the authors of this compilation:* Resolutions 1422 (2002) and 1487 (2003) are not case-specific or situation-specific contrary to what is required by Chapter VII of the UN Charter and by article 16 of the Rome Statute. Furthermore, these resolutions do not contain any direct or indirect reference to a threat to the peace that, under article 39 of the UN Charter provide the legal basis for the application of Chapter VII. The determination of the existence of a threat to the peace, a breach to the peace or an act of aggression is an essential precondition for any measure adopted under Chapter VII by the UN Security Council.