



## The ICC-Prosecutor's 15<sup>th</sup> Report on Darfur – This time, it's personal

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### Fokus

The outgoing prosecutor of the ICC and the Sudanese permanent representative to the UN had a fierce discussion in the Security Council. Unfortunately, the one who suffers is the ICC itself.

UN Doc. S/PV.6778 of 5 June 2012.

The outgoing prosecutor of the International Criminal Court (ICC) has recently briefed the Security Council on the situation in Darfur, Sudan. The ICC is investigating the situation and prosecutes alleged crimes against humanity, war crimes and genocide since the Security Council's referral by Resolution 1593 in 2005. Moreno Ocampo's report of June 2012 will be his last in this function. This might explain the open words exchanged. **The Prosecutor attacks...** The prosecutor starts matter-of-factly with a brief overview of the ICC's actions since the last report of December 2011. He explains the steps taken; special emphasis is put on the failure of Sudan to cooperate with the ICC and on the new warrant of arrest issued against the Sudanese incumbent minister of defense, *Abdel Hussein*. In the course of the report, his words become tangy and more emotional. The prosecutor claims that the Security Council's authority and credibility is challenged by the defiance of the ICC by Sudan: Four suspects remain in governmental functions while no domestic procedure is being conducted. In addition, the African Union and Arab League openly oppose any enforcement of the arrest warrant against *Omar al-Bashir*, Sudan's president wanted for genocide, war crimes and crimes against humanity. The prosecutor seizes the chance and calls upon the self-perception and honor of the Council's members: Here is a chance to show the determination and power of the Security Council. Between the lines he even suggests that the Council may take military measures to ensure Sudan's compliance with its international obligations. What really got the minds going was the final statement of the prosecutor. After listening to the Sudanese ambassador, the prosecutor claimed that the speech denying the crimes in Darfur could be considered a part of these crimes and thus the ambassador is on notice for further criminal investigation. **...and the Sudanese ambassador responds...** Such words cannot go unanswered. Consequently, the Sudanese ambassador responds in equally harsh words, refutes the allegations and attacks the prosecutor. The "terrorist's" statement, given in an "emotional state" as a result of pointing out "his conduct and his lack of credibility" tries to "silence the voice of justice". This shows his biased approach in which he "has tackled all of these issues – in a totally illegal, immoral and illogical manner, to the extent of intimidation and terrorization." At least the current government of Sudan is elected and supported by the majority of the Sudanese constituency, its members are being prosecuted, whilst the rebels are neither elected nor prosecuted, states the ambassador. And while the prosecutor talks about genocide and ethnic cleansing, international investigators have not found any evidence supporting this conclusion. **...while the International Community fails to act...** The members of the Security Council are divided on the ICC's handling of the case. Some states fully support the ICC while others limit their support to the Darfur-situation, mainly because they are non-member-states to the ICC. Most importantly, some states prefer a political solution to the crisis and doubt that the ICC's actions do any good. And while some states claim that the arrest warrants must be enforced, one must doubt that the Security Council will take any action. Given his past record, the Council has provided basically no help for the ICC in seven years. Interestingly, the prosecutor's concern regarding the conflict between Sudan and South Sudan was shared by many states. Given that *al-Bashir*, *Hussein* and *Harun*, key-figures of the Darfur-conflict, are also key-figures in the current conflict with the southern neighbor, the international community must keep not one, but two eyes on this conflict. To conclude, the prosecutor and the ambassador spoke true words in the Council. It is regrettable that the arrest warrants are not taken seriously by all states. It is equally regrettable that the prosecutor did not address the rebels, for there are proceedings against rebel leaders. The ambassador's critique that the ICC lacks jurisdiction over the non-state-party Sudan cannot be upheld in light of Resolution 1593 (2005). The International Commission of Inquiry under the leadership of *Antonio Cassese* has really not found any evidence regarding genocide – but its conclusion was based on the lack of evidence, and it did explicitly not exclude the possibility of genocide. The ambassador is not the only one advising the prosecutor not to base his investigations on individuals in the spotlight of the media. Instead, critics maintain, he should also keep in mind that these arrest warrants must be enforced and that every warrant of arrest not enforced damages the ICC's authority and credibility more than the prosecution of only 'minor' suspects. The prosecutor's thoughtless answer to the Sudanese ambassador should have never been uttered. It is somewhat ridiculous to compare the denial of crimes with their actual perpetration (art. 25 [3] ICC-Statute). Most importantly, it is a shame that several suspects remain at large and that the Security Council fails again in enforcing the arrest warrants. It is not only the obligation of Sudan to cooperate, it is also the moral, if not legal, obligation of the International Community to support the ICC.

### Verantwortung

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