

**FIGHTING IMPUNITY:  
THE INTERNATIONAL CRIMINAL COURT  
AND THE AFRICAN UNION**

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## INTRODUCTION

This paper examines Africa's fight against impunity<sup>1</sup> in light of the decision of the Prosecutor of the International Criminal Court ('Court') to investigate President Omar Al Bashir of Sudan for his alleged involvement in the crimes that have occurred in Darfur and the subsequent recent decision by the Court to issue a warrant for his arrest. The aim is to understand the salience or lack of it in upholding the principles of democracy, human rights, the rule of law, and good governance, as well as condemning and rejecting impunity as encapsulated in the African Union Constitutive Act Union. In order to achieve this objective, the history of Africa's response to the establishment of the Court and the African Union's (AU) commitment at a continental and international level to fight impunity will be charted and considered.

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## BACKGROUND

Before undertaking this task it is appropriate to place the issue under discussion into a broader context of some efforts within the continent to address human rights and accountability. It can be argued that African leaders committed themselves to fight impunity with the adoption of the Constitutive Act. This commitment is reiterated in many of the AU Assembly Summit decisions and declarations. By suspending Mauritania and Togo from the AU for the unconstitutional changes of government in 2005, the AU demonstrated a willingness to act according to the provisions of the Constitutive Act. Moreover, the African Court of Justice has jurisdiction covering the African Charter on Human and People's Rights (Charter) and other human rights instruments ratified by the states concerned. The issue of human rights is reinforced in the AU's efforts to build relationships between governments and civil society, to ensure that governments are responsive to the needs of particularly vulnerable groups, such as women and children. The importance of involving civil society in policy formulation and decision making was in fact institutionalised with the establishment of the Economic, Social and Cultural Council (ECOSOCC).<sup>2</sup> Finally, the protocol establishing the Peace and Security Council was adopted in 2004, with the primary objective of promoting peace and security in Africa.<sup>3</sup> As part of this mandate, the promotion of good governance and the protection of human rights and fundamental freedoms are seen as integral to building peace and preventing conflict. These developments illustrate a desire by African leaders to create a culture and institutional and legal framework which fosters and encourages the protection of human rights and works against impunity.

## The Darfur crisis: a brief background

A cursory exposition of the Sudan-Darfur conflict is provided here.<sup>4</sup>The conflict is said to have exploded in 2003, when rebels attacked government forces and infrastructure in Darfur. The rebels' dominant grievance appears to have been the inequitable allocation of resources by the Khartoum government, to the detriment of the Darfur region. The government, in response to the attack, sent in government forces supported by the 'Janjaweed'. The Janjaweed can loosely be defined as Arab militia supportive of the Khartoum government. In 2006 the Government of Sudan signed a peace agreement with a faction of the Sudanese Liberation Army (SLA), a rebel group involved in the initial 2003 uprising, but two other prominent groups refused to sign - the SLA faction of Abdel Wahid Mohamed Nur and the Justice and Equality Movement (JEM). In 2007 a United Nations-African Union force replaced the AU force which had been deployed in Darfur. In 2008 violence continued with aerial bombings and ground attacks by government forces. In response the JEM attacked Khartoum and it is estimated that 200 people died in the assault. Today, fighting between the rebel groups and government forces continues.<sup>5</sup>

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## REFLECTING ON AFRICA'S COMMITMENTS TO FIGHTING IMPUNITY

President Museveni of Uganda, in his first address to the Heads of State and Government of the Organization of African Unity (OAU) in 1986 stated that:

Over a period of 20 years three quarters of a million Ugandans perished at the hands of governments that should have protected their lives (...) I must state that Ugandans (...) felt a deep sense of betrayal that most of Africa kept silent (...) the reason for not condemning such massive crimes had supposedly been a desire not to interfere in the internal affairs of a Member State, in accordance with the Charters of the OAU and the United Nations. We do not accept this reasoning because in the same organs there are explicit laws that enunciate the sanctity and inviolability of human life.<sup>6</sup>

This statement, made during the first year of Museveni's reign as president of Uganda, suggests that contrary to the OAU's founding principle of non-interference in the affairs of member states, the protection of human rights and the pursuit of justice for the people of Africa should be valued above other political interests. However, with little - if any - effort on the part of member states to curb these human rights violations or to punish the leaders who are responsible for such crimes, this goal remains unrealised and genocides and civil wars have continued.

The OAU's focus was predominantly to fight colonialism and apartheid and to protect the sovereignty of the state. There have been suggestions that the protection of sovereignty and the principle of non-interference in internal affairs of member states resulted in the failure of the OAU to act when gross human rights violations occurred, such as those committed by Idi Amin in Uganda, Bokassa in the Central African Republic, and the Rwandan genocide. Non-interference also implied the consent of parties to a conflict to act. This consent was often not provided.<sup>7</sup> In the 1990s the AU emerged, because of the growing need for Africa to deal with developing and pressing concerns, such as greater unity among African states and investment and good governance.<sup>8</sup>

As with the OAU, the AU entrenched the principles of respect for sovereignty and non-interference in the internal affairs of member states. However, the Constitutive Act, the founding act of the AU, provides for exceptions, notably, article 4 (h) "the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity". This illustrates a commitment to fight impunity.<sup>9</sup>

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In 1998, over 150 UN member states participated in the negotiations that resulted in the Rome Statute of the International Criminal Court ('Rome Statute') - the statute establishing the Court. The Southern African Development Community (SADC) was particularly vociferous in its defence of state co-operation and universal jurisdiction of the Court displaying a firm commitment to fighting impunity. As one of the regional blocks recognised by the AU, SADC's stance in the negotiations can also be deemed to be illustrative of an African collective understanding of what was expected of the Court. SADC states wanted to push for full state co-operation without exceptions if a member state had ratified the Rome Statute. This hard-line approach was motivated by the awareness that the Court, since it has no police force of its own, would be dependant on nation states to arrest suspects. Although a draft statute had added grounds for non-co-operation with the International Criminal Court, citing considerations of national security, SADC states continued to press their position that no exclusions should be incorporated into the Rome Statute. The final version contained no exemptions.<sup>10</sup>

Thirty African countries have ratified the Rome Statute and Africa is the largest represented region at the Court. Since 1998, the AU has taken steps to fully ratify the Rome Treaty. In 1998 the resolution on the Ratification of the Treaty on the International Criminal Court issued by the African Commission on Human and Peoples' Rights<sup>11</sup> ('African Commission') called on all state parties to the African Charter on Human and People's Rights to sign and ratify the Rome Treaty. A 1999 OAU Ministerial Conference on Human Rights in Grand Bay, Mauritius, adopted a declaration and plan of action which included a request to

member states to ratify the Rome Statute. A resolution on the Rome Statute adopted in Pretoria, South Africa, by the African Commission in 2002, reiterated the need for ratification of the Rome Treaty, as well as its incorporation into national legislation. Further reinforcing the importance of ratification, the AU included in its 2004-2007 Strategic Plan - as one of its five commitments - the need to ensure that all member states ratify the Rome Statute.

In 2005 in Banjul, Gambia, the African Commission issued a resolution on ending impunity and domesticating and implementing the Rome Statute. The resolution urged member states to ratify and implement the Rome Statute and to withdraw from Article 98 Bilateral Immunity Agreements. Article 98 of the Rome Statute makes the powers of the Court to request the surrender of a suspect subordinate to other rights and obligations under other international agreements. However, the United States has used Article 98 as a loophole and has actively sought to sign bilateral agreements with some of the AU member states to subvert the aims of the Court by effectively ensuring that its nationals are protected from being surrendered to the Court.<sup>12</sup> Accordingly, the Banjul resolution called upon member states to withdraw from these US spurn agreements and condemn and reject impunity. In 2006, the Peace and Security Council 'urged' the government of the Sudan and the rebel movements to work with the Prosecutor of the Court.<sup>13</sup> These activities since the Court's inception display at least a level of institutional willingness to fight against impunity from within the AU. However, political will is also needed to drive this fight.

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## THE INTERNATIONAL CRIMINAL COURT AND THE SUDANESE CASE

Although the Court does not usurp the functions of the African Court of Justice, which does not have criminal jurisdiction, the International Criminal Court is the only international body charged with hearing criminal cases.<sup>14</sup> The court is also deemed to be a court of last resort. As stated in a report to the UN Security Council on the situation in Darfur, the Court will intervene only if, firstly, no national attempts have been made to investigate or prosecute those individuals the Court is investigating or prosecuting, and secondly, in instances where the investigation or prosecution that is carried out by a national court is deemed not willing or unable to carry out investigations of prosecution.<sup>15</sup>

The Court's involvement in the Darfur crisis can be traced back to 2005 with Security Council Resolution 1593, which referred the Sudanese situation to the Court. Sudan is not a party to the Rome Statute and consequently a Security Council referral was required for the Court to exercise jurisdiction. Once all statutory requirements were met, the Prosecutor opened an investigation. Subsequently, warrants of arrest were issued for Ahmad Muhammad Harun,

Minister of State for Humanitarian Affairs of Sudan, and Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb'), alleged leader of the Militia/Janjaweed on 2 May 2007, and for Omar Hassan Ahmad Al Bashir on 14 March 2009. Bahr Idriss Abu Garda of the Zaghawa tribe and Chairman and General Coordinator of Military Operations of the United Resistance Front, made his first appearance at the Court on 18 March 2009.<sup>16</sup>

As noted earlier, the Court is a court of last resort. While the government of Sudan established Special Courts to try individuals for crimes committed in Darfur, there are justifiable concerns. These courts have so far only dealt with low-level officers and civilians, and, according to the president, if there is no mechanism in place to protect witnesses. Therefore, based on the Rome Treaty, as long as the Sudanese justice system shows an inability to deal with these concerns, the Court may continue with its cases.<sup>17</sup>

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The crimes Omar Hassan Ahmad Al Bashir, President of Sudan, is alleged to have committed were allegedly directed against the Fur, Masalit and Zaghawa groups by the Sudanese Armed and police forces and the Janjaweed Militia, the National Intelligence and Security Service, and the Humanitarian Aid Commission.<sup>18</sup> It is averred that President Al Bashir played a keen role in the coordination of these units in carrying out the government's counter-insurgency campaign.<sup>19</sup> Bashir was thus issued an arrest warrant for being responsible for crimes against humanity and war crimes.

## THE QUESTION OF UNIVERSAL JURISDICTION AND DOUBLE STANDARDS

In February 2009, the AU Assembly called for a year-long delay in the ICC's prosecution, raising the concern that the arrest of the president would undermine the current peace processes in Sudan.<sup>20</sup> The Peace and Security Council echoed the same sentiment in a communiqué in March 2009. However, in a reversal at the AU summit in July 2009, the AU Assembly made a decision not to co-operate with the ICC for the arrest of Omar Al Bashir, because the initial request to have the issue deferred was not acted upon.<sup>21</sup> While African Heads of States see the ICC warrant as an obstruction to peace building in Sudan, some regional watchers have asserted that the decision not to co-operate with the ICC goes against the strides towards fighting impunity and shows a lack of commitment to the plight of victims of violence.<sup>22</sup> Thus it can be seen how the initial stance by AU institutions towards the ICC has changed since the Al Bashir case was initiated. These institutions have levelled accusations of universal jurisdiction and double standards at the Court.

## Universal jurisdiction

Universal jurisdiction can be described as the right of a court to try a suspect even though it does not have a direct jurisdictional connection with either the suspect or the crime.<sup>23</sup> This principle is premised on the idea that some crimes are so ‘heinous’ (such as genocide and crimes against humanity), that they justify the ICC’s extended jurisdiction.<sup>24</sup> In February 2009, at the AU Summit, the Assembly resolved in relation to the principle of Universal Jurisdiction that:

- The abuse and misuse of indictments against African leaders have a destabilising effect that will negatively impact on the political, social and economic development of states and their ability to conduct international relations
- Those warrants shall not be executed in African Union Member States.

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The allegations that have been made by the AU of abuse of the principle of the ICC’s universal jurisdiction discredit the institutions of the AU, which have issued countless resolutions to end impunity and requests to ratify the Rome Statute. As discussed earlier, one of SADC’s requests was for effective universal jurisdiction. The SADC legal experts supported the option mooted, which included the scenario that if the state that had custody over the suspect was a party to the Rome Statute, the Court would have jurisdiction.<sup>25</sup> This notwithstanding, owing to pressure, particularly from the United States, which was extremely active in the drafting phase of the Rome Statute although it has not ratified the statute, this provision in Article 12 of the Rome Statute is ultimately more limited than was initially envisaged. The Court only has jurisdiction if the “accused is a national of a State Party” or the “crime took place on the territory of a State Party”. However, the Court also has jurisdiction if the Security Council refers the situation to the Prosecutor. Under these circumstances, the accused does not have to be a national of a State Party nor does the crime have to have taken place on the territory of a State Party.<sup>26</sup>

Therefore, even though the current call is to curtail the application of universal jurisdiction and the reach of the Court, this has not always been the trajectory that African states have followed. Moreover, strictly speaking, the Court does not have universal jurisdiction since its jurisdiction is limited to the situations set out above.

## Double standards

The accusation of double standards since the issuing of the arrest warrant has come from senior AU representatives as well as institutions within the AU. For



instance, the Chairman of the AU Commission raised concerns that the ICC was only targeting Africans to the exclusion of other human rights violations across the globe.<sup>27</sup>

With regard to the claim of double standards, it should be noted that although all four situations being dealt with by the Court are in Africa, three are self-referrals (as in the case of Uganda, the Democratic Republic of Congo ('DRC'), and Central African Republic ('CAR')), while the fourth, namely Sudan, is a United Nations referral. The self-referrals indicate that it is these states themselves that have asked for the Court's assistance. These self-referrals can be seen as African leaders having a desire to fight impunity and to utilise the Court towards this end. Consequently, it is not the Court that is targeting African states.

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While African leaders drive the critique of the Court's double standards, it may be significant to note that African leaders have not shown much effort in the initiation of cases which go to the Court. As an example, the Palestinian Authority is currently in the process of seeking to have the situation within its territories investigated. Palestine has granted the Court jurisdiction over its territories. Although there are legal complications, and the Palestinian authority is acutely aware of the fact that their members may also be implicated in war crimes, strategically it will highlight the plight of the Palestinians, and if the Prosecutor decides to open an investigation and the pre-trial chamber agrees, then the Palestinian issue, which has always been blocked at the Security Council level, will finally have an international institution dealing with the situation.<sup>28</sup> Instead of using the double standards mantra, the Palestinian Authority has initiated the investigation, thereby using the Court to fight against double standards.

The vast majority of the 8 137 communications on abuses around the world received by the Court come from individuals living in the United States, United Kingdom, Germany, Russia, and France.<sup>29</sup> Yet, in terms of the Rome Statute, a case can come before the Court through a state party referral, a United Nations referral, or by the Prosecutor initiating an investigation. If the Prosecutor initiates an investigation, information can be obtained from the state, non-state parties and any other reliable source. This illustrates that individuals within these countries are actively trying to utilise the Court to fight impunity. The AU can play a role in encouraging communications to the Court by African individuals, organisations, and states, and also actively work to ensure that those situations that the AU believes should be investigated by the Prosecutor are brought to the attention of the Court. Rather than seeing the Court as its foe, the Court can be utilised, as in the case of Uganda, DRC and CAR, to assist a state's, or even the AU's, attempts to fight impunity.

## THE UNITED NATIONS SECURITY COUNCIL REFERRAL - FAILING LEGITIMACY

The most significant problem with the Sudanese case is the referral by the United Nations Security Council. The Security Council, which has been criticised for being an undemocratic institution, is a relic of a different order (the Cold War political order) but continues in a discourse dominated by its members calling for a democratic world order. Possibly the most succinct summation of the antiquity of the Security Council was made by Gareth Evans, President of the International Crisis Group, when he referred to the Security Council as, “the lynchpin body for the whole collective security system, which almost everyone acknowledges needs to be restructured to reflect the world of the 21st century, not the middle of the last”.<sup>30</sup>

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The Security Council consists of five permanent members, the United States, Britain, France, Russia and China, and 10 non-permanent members with two-year terms for each.<sup>31</sup> The five permanent members have veto rights, which means that if one member vetoes a resolution it will not be passed regardless of the votes of the other permanent members and non-permanent members. In 2005 talk of reform of the Security Council was mooted. Africa’s position on reform of the Security Council was set out in the AU’s Executive Council 7th Extraordinary Session in March 2005, known as the Ezulwini Consensus. Africa requested two permanent seats with veto rights and five non- permanent seats. Although opposed to the veto right in principle, Africa was of the opinion that as long as the right existed, it should be afforded to all members. To this end, there was a general consensus among African leaders that the AU should determine who the two permanent members would be. However, none of Africa’s wishes for reform or, for that matter, any wishes of other regional block or groupings, were met by the United Nations. This failure to reform the Security Council brought the legitimacy of the Security Council as currently structured into question. According to Evans,<sup>32</sup> unless the Security Council becomes more representative, its legitimacy will erode and its powers will become less effective.

Moreover, at critical times in history, the Security Council has failed to act decisively to protect the most vulnerable against human rights and violent abuses. For instance, by failing to act decisively in Bosnia (1994-1995) and Rwanda (1994) the Security Council’s legitimacy has also been slowly eroded. In the crisis in Sudan this legitimacy is equally being eroded. In a situation where two Security Council members, namely the United States and China, have not ratified the Rome Statue but have referral powers to the Court by virtue of

being permanent members of the Security Council, there may be justifiable concerns. The Court seeks to present a more democratic face. Voting decisions at the Assembly of States, to which all countries who have ratified the Rome Statute belong, is determined by a simple majority, although at all times the ideal is to strive for consensus. Until the Security Council is rendered obsolete or reformed, any decisions it takes will rightly be viewed with scepticism and as lacking in legitimacy.<sup>33</sup>

## CONCLUSION

From the discussion presented above it is clear that the AU, at least on paper, is working towards fighting impunity. The AU institutions have issued countless resolutions and declarations to this effect. However, as seen in the Sudanese case, and particularly with regard to the arrest warrant issued for President Al Bashir, a new and contradictory response has been ushered in. Utterances and declarations accusing the Court of abusing universal jurisdiction and of double standards have unfortunately reflected a defensive response rather than one seeking engagement.

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*From the discussion presented above it is clear that the AU, at least on paper, is working towards fighting impunity.*

Nonetheless, there is still a legitimate concern about the Sudanese case, where it comes to the Security Council referral. The Security Council, an undemocratic institution, including two members who have not ratified the Rome Statute, can refer a matter to the Court. This is problematic, especially in light of recent efforts to reform the Security Council, which have failed to bear any fruit. This does not, however, detract from the fact that the AU needs to be consistent in the message it sends out and needs to remain true to its legal commitments. The AU needs to remain an organisation which at all times maintains its integrity and one that functions on the principles and objectives embodied in its founding Constitutive Act. In this way, rather than being viewed as a 'Heads of State Club' that is only interested in protecting its own interests, as opposed to protecting the interests of the people that it serves, the AU should be at the forefront of the fight to combat impunity, thereby illustrating its commitment to the people of Africa

## RECOMMENDATIONS

1. The AU needs to engage proactively with the Court. As demonstrated, the Court is not targeting African states and the AU has always worked to strengthen the powers of the Court by encouraging ratification. In this regard, the AU should open a liaison office in the AU, as suggested by the Court. The AU should also sign the memorandum of understanding with the Court, which has been in the pipeline for many years.<sup>34</sup>

2. The AU needs to demonstrate consistency in its words and actions to ensure that it remains a credible institution. The recent turnaround decision not to comply with the arrest warrant works against the credibility of the institution.
3. The pressure to reform the Security Council must continue to be prioritised by the AU. In this regard the AU has consistently dealt with the issue as noted in the Summit decisions and should continue to focus on and push for reform of the Security Council.
4. The AU must encourage its citizens to use the mechanisms of the Court to fight impunity throughout the world. With a liaison office in the AU the AU can encourage communications to the Prosecutor and actively work with civil society to gather information that can strengthen communications.

## ENDNOTES

- 1 Adama Dieng, United Nations Under-Secretary General and Registrar of the International Criminal Tribunal for Rwanda defined impunity as “the failure to punish violations of established norms”, adding that this is the way the term is most often defined. Dieng, A. United Nations Under-Secretary General, Registrar of the International Criminal Tribunal for Rwanda. Speech: Clarification of concepts: Justice, Reconciliation and Impunity.
- 2 Landsberg, C. and McKay, S. Engaging the New Pan-Africanism- Strategies for Civil Society. ActionAid International. 2004.
- 3 Human Rights Institute of South Africa. A Guide to the African Court on Human and Peoples' Rights. Johannesburg, South Africa. 2006. [Online]. Available at: [http://www.hurisa.org.za/Advocacy/Court\\_Guide.htm](http://www.hurisa.org.za/Advocacy/Court_Guide.htm). and Protocol on the African Human rights Court (1998/2004).
- 4 For a more nuanced and in-depth discussion, which cannot be given here because of word count restraints, Sharif Harir's Short-Cut to Decay: The Case of the Sudan should be read for a more holistic understanding of the conflict.
- 5 Information on the current conflict obtained from the International Crisis Group, Human Rights Watch and ReliefWeb.
- 6 Ben Kioko, The right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention IRRC December 2003 Vol. 85 N.
- 7 Ibid, pp 812-814.
- 8 Murithi, T. Institutionalising Pan-Africanism: Transforming African Union values and principles into policy and practice. ISS Paper 143. June 2007.
- 9 See African Union Summit, Transition from the OAU to the African Union, [http://www.au2002.gov.za/docs/background/oau\\_to\\_au.htm](http://www.au2002.gov.za/docs/background/oau_to_au.htm) and Ben Kioko, The

right of intervention under the African Union's Constitutive Act: From non-interference to non-intervention IRRC December 2003 Vol. 85 N.

- 10 Sivu Maqungo, Principal State Law Advisor South Africa, The establishment of the International Criminal Court: SADC 's participation in the negotiations, published in African Security Review Vol 9 No 1, 2000.
- 11 The African Commission was established in terms of article 30 of the African Charter on Human and People's Rights ('Charter'). It is one of the implementing mechanisms of the Charter. There is still uncertainty as to the relationship the African Commission has with the AU. Some have argued that since the African Commission was established in terms of the Charter, which was adopted by the OAU, it should also have been included in the Constitutive Act. However, it has been suggested that the African Commission has more independence now with its independent experts, rather than being a specialised body within the AU. The effect is that the African Commission has to account for its decisions and the work it undertakes to the AU, but will determine its decisions independently.<sup>11</sup> N Barney Pityana. Reflections on the African Court on Human and Peoples' Rights. [Online]. Available at: [Online]. Available at:  
<http://www.unisa.ac.za/contents/about/principle/docs/Human&People.doc>.
- 12 International Criminal Law, Gesellschaft für Völkerstrafrecht, Berlin, Germany. Press release . The latest US-campaign against the International Criminal Court and Human Rights Watch. United States Efforts to Undermine the International Criminal Court: Article 98 Agreements. August 2, 2002.
- 13 Organisations such as the Coalition for an International Criminal Court and Human Rights Watch have documented Africa's commitment to fight impunity and have tried to illustrate that Africa is not being singled out by the Court.
- 14 For more information on the African Court see Reflections on the African Court on Human and Peoples' Rights by N Barney Pityana.<sup>□</sup>
- 15 Second Report of the Prosecutor of the International Criminal Court, Mr.Luis Moreno Ocampo. to the Security Council Pursuant to UNSC 1593 (2005). 13 December 2005.
- 16 International Criminal Court. Situation in Darfur, Sudan. <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0205/>.
- 17 Second Report of the Prosecutor of the International Criminal Court, Mr.Luis Moreno Ocampo. to the Security Council Pursuant to UNSC 1593 (2005). 13 December 2005.
- 18 In The Case of the Prosecutor v. Omar Hassan Ahmad Al Bashir ("Omar Al Bashir"), No.: ICC-02/05-01/09, Date: 4 March 2009, Pre-trial Chamber 1, International Criminal Court, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir pg. 32.
- 19 In The Case of the Prosecutor v. Omar Hassan Ahmad Al Bashir ('Omar Al Bashir'), No.: ICC-02/05-01/09, Date: 4 March 2009, Pre-trial Chamber 1, International Criminal Court, Warrant of Arrest for Omar Hassan Ahmad Al Bashir, p 6.

- 20 Assembly of the African Union, Twelve Ordinary Session, 1-3 February 2009, Addis Ababa, Ethiopia. Thabo Mbeki has recently returned from Sudan and is expected to provide a report on how best to resolve the Darfur crisis.
- 21 African Union 2009, Decision on the meeting of African states parties to the Rome Statute of the International Criminal Court (ICC) Assembly/AU/Dec.245(XIII)  
([http://www.iol.co.za/index.php?set\\_id=1&click\\_id=68&art\\_id=nw20090703211842747C805842](http://www.iol.co.za/index.php?set_id=1&click_id=68&art_id=nw20090703211842747C805842)). 3 July, 2009.
- 22 Kariri, J.N. 14 July 2009: AU's Decision in Sirte Discourages ICC Supporters. Institute for Security Studies.
- 23 See Universal Jurisdiction Under International Law by Kenneth C Randall in Texas Law Review 66 (March 1998).
- 24 Africa legal aid, Keynote Address by Judge Navanethem Pillay, President of the International Criminal Tribunal for Rwanda ("ICTR"), at Experts Meeting on "African Perspectives on Universal Jurisdiction for International Crimes" 18-20 October 2002, Arusha, Tanzania
- 25 Sivu Maqungo, Principal State Law Advisor, South Africa, The establishment of the International Criminal Court: SADC 's participation in the negotiations, published in African Security Review Vol 9 No 1, 2000.
- 26 International Criminal Court, Jurisdiction and Admissibility, <http://www.icc-cpi.int/Menus/ICC/About+the+Court/ICC+at+a+glance/Jurisdiction+and+Admissibility.htm>
- 27 Radio France Internationale. Gaddafi elected AU head, Union backs Sudan in critique of ICC. [Online] [http://www.rfi.fr/actuen/articles/110/article\\_2786.asp](http://www.rfi.fr/actuen/articles/110/article_2786.asp)
- 28 International Criminal Court, Palestine, <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Comm+and+Ref/Palestine/>
- 29 International Criminal Court, Communications, Referrals and Preliminary Analysis, <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Comm+and+Ref/Communications+and+Referrals.htm>.
- 30 Evans, Gareth. UN Reform and Collective Security: A Summit in Danger of Collapse. Notes for Panel presentation by Gareth Evans, President of International Crisis Group, to DPI-NGO Conference, New York, 8 September 2005. [Online] <http://www.crisisgroup.org/home/index.cfm?id=3647&l=1>.
- 31 United Nations. UN Security Council Members. [Online] <http://www.un.org/sc/members.asp>.

- 32 Evans, Gareth. Does the United Nations Have a Future? International Crisis Group, 40th Anniversary Commemoration of the Norman Paterson School of International Affairs, Foreign Affairs Canada, Ottawa, 14 November 2005
- 33 International Criminal Court, Assembly of States Parties, <http://wwwold.icc-cpi.int/asp.html>
- 34 Kariri, J.N. 14 July 2009: AU's Decision in Sirte Discourages ICC Supporters. Institute for Security Studies.