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Kenya: failure to arrest President Omar al-Bashir of Sudan

European Parliament resolution of 9 September 2010 on Kenya: failure to arrest President Omar al-Bashir

The European Parliament,

- having regard to its previous resolutions on the Darfur crisis in Sudan,
 - having regard to the International Criminal Court arrest warrants issued against Sudanese President Omar al-Bashir for crimes against humanity and genocide,
 - having regard to UN Security Council Resolution 1593/2005,
 - having regard to the EU High Representative Catherine Ashton's statements of 22 July 2010 and 20 August 2010 urging Chad and Kenya, respectively, to cooperate with the ICC,
 - having regard to Decision No ICC-02/05-01/09 of the Pre-Trial Chamber of the ICC of 27 August 2010 informing the UNSC and the Assembly of the States Parties to the Rome Statute about Omar al-Bashir's presence in the territory of the Republic of Kenya,
 - having regard to the Rome Statute,
 - having regard to the various partnership agreements, such as the Cotonou Agreement between the EU and African states, which stipulates that trade and aid are subject to conditions pertaining to the rule of law,
 - having regard to Article 4 of the Constitutive Act of the African Union, rejecting impunity,
 - having regard to Rule 122(5) of its Rules of Procedure,
- A. whereas the Kenyan Government invited and welcomed President Omar al-Bashir of Sudan to take part in the ceremony on 27 August 2010 at which the Kenyan Constitution was promulgated, knowing that he had been indicted by the ICC,
- B. whereas on 4 March 2009 the ICC issued an international warrant for the arrest of the President al-Bashir for crimes against humanity (murder, extermination, deportation, torture and rape) and war crimes (planning attacks on civilians and looting), and President al-Bashir is also the subject of an order of 12 July 2010 indicting him for 'genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction',
- C. whereas Kenya, as well as 31 other African countries, is a signatory to the Rome Statute, which imposes upon them an obligation to arrest any person who is wanted by the ICC and to deliver them to the Court or deny the person admission to their territory,
- D. whereas countries which have ratified the UN Genocide Convention of 1948 have an

obligation to cooperate with the ICC, even if they are not signatories to the Rome Statute,

- E. whereas Sudan, a Member State of the United Nations, has persistently refused to cooperate with the ICC, thus denying truth and justice to millions of victims of war atrocities in Sudan, and especially in the Darfur region,
- F. whereas the Kenyan Prime Minister has admitted that inviting President al-Bashir was a mistake and that the failure of the Kenyan authorities to arrest him constitutes a serious breach of Kenya's international obligations under not only the Rome Statute but also its national legislation, including its new Constitution, which recognises the direct applicability of international law,
- G. whereas former UN Secretary General Kofi Annan and the current mediator in the Kenyan crisis have demanded that Kenya should make clear its position on the ICC and reaffirm its commitment to the ICC,
- H. whereas Kenya has a clear obligation to cooperate with the ICC in relation to the enforcement of such arrest warrants, which stems both from United Nations Security Council Resolution 1593, whereby the United Nations Security Council urges all States and concerned regional and other international organisations to cooperate fully with the ICC, and from Article 87 of the Statute of the Court, to which the Republic of Kenya is a State Party,
- I. whereas President al-Bashir has visited Chad, which is likewise a signatory to the Treaty establishing the ICC, although it does not comply with its obligations,
- J. whereas, since being indicted, the President of Sudan has also visited Egypt, Libya, Saudi Arabia, Eritrea, Qatar, Zimbabwe and Ethiopia,
- K. whereas in July 2009 the African Union indeed announced that its Member States would refuse to cooperate, as required by Article 98 of the Statute and whereas it reiterated this position after the indictment for genocide of Omar al-Bashir, then, by means of a resolution adopted by consensus on 27 July 2010 at its Kampala Summit, called on the UN Security Council to suspend the prosecution of the Sudanese President pursuant to Article 16 of the Statute,
- L. regretting the refusal of the African Union to permit the establishment of an ICC office at the AU and its threat to sanction those African States which do not respect the AU decision,
- M. whereas genocide, crimes against humanity and war crimes must not be allowed to go unpunished and whereas the treatment of the case of President al-Bashir sets an important precedent in efforts to combat the impunity of serving Heads of State,
 - 1. Expresses its regret at Kenya's decision to invite President Omar al-Bashir to attend the signing of the new Constitution, which brings a new democratic governance era to the country;
 - 2. Calls on the members of the international community, including all African countries, to ensure full accountability for crimes committed against international law, particularly in Sudan;

3. Calls on African Heads of State and Governments which are signatories to the Rome Statute to honour their commitments and cooperate with the ICC in its investigations of war crimes, crimes against humanity or genocide;
4. Stresses that the ICC has a duty to exercise its jurisdiction impartially and universally, including in Western countries, and that respect for its decisions is vital to its credibility and its future action;
5. Regrets that some UN Security Council members are not signatories to the Rome Statute establishing the ICC;
6. Deplores the positions adopted by the African Union and the Arab League in refusing to cooperate with the ICC and calls on the High Representative of the European Union to take the necessary steps to ensure that this item is placed on the agenda at the next AU/EU Summit;
7. Calls upon the African Union to review its position and oppose impunity, injustice, war crimes, crimes against humanity and genocide;
8. Calls for an end to impunity for all crimes perpetrated during the war in Sudan, and hopes that President al-Bashir will soon be brought to the ICC in The Hague – where he will benefit from rights granted by international law – as part of the necessary re-establishment of justice, the rule of law and respect for the victims of such crimes;
9. Calls on the President and Government of Kenya to reaffirm their commitment and their cooperation with the ICC, including with regard to the acts of violence following the elections of 2007 and 2008;
10. Instructs its President to forward this resolution to the Council, the Commission, the institutions of the African Union, the governments and parliaments of the Member States, the United Nations Security Council, the International Criminal Court, the Kenyan Government and all parliaments and governments of IGAD.