United Nations Update

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The United Nations Faces Challenges to Effective Action in Darfur

The situation in the Darfur region of Sudan remains dire. Widespread human rights abuses persist despite the presence of 7,000 African Union (AU) peacekeeping troops. With the alleged support of the Sudanese government in Khartoum, militias known as the Janjaweed continue to commit war crimes and crimes against humanity, often targeting specific ethnic groups, such as the Fur, Masalit, and Zaghawa peoples. According to reports from many international organizations, these crimes include the killing of an estimated 400,000 Darfuris during the organized looting, pillaging, and raping of villages since early 2003. The United States government has labeled this activity genocide, although a September 2004 report of a UN International Commission of Inquiry on Darfur concluded that the Sudanese government has not pursued a policy of genocide. The report noted, however, that “[i]nternational offences such as the crimes against humanity and war crimes … may be no less serious and heinous than genocide.”

Recent reports indicate an increased level of violence, which is now spreading into neighboring Chad. The conflict has already forced a massive exodus of civilians from their homes. According to the Office of the UN High Commissioner for Refugees, approximately 2,000,000 refugees and internally displaced persons live in the immediate region, and the numbers continue to climb. The UN Security Council has referred the case to the International Criminal Court (ICC) and continues to explore other responses to the crisis, including targeted sanctions and the establishment of a UN peacekeeping mission. It is uncertain, however, whether these options, outlined below, will guarantee the results needed to stop the ongoing atrocities.

UN Security Council Sanctions

UN Security Council (UNSC) Resolution 1556 (2004) imposed an arms embargo on all non-governmental entities and individuals, including the Janjaweed, operating in the states of North, South, and West Darfur. UNSC resolution 1591 (2005) specifically expanded the arms embargo to include rebel groups in the region, including the Justice and Equality Movement and the Sudan Liberation Movement (SLM), who were parties to the April 2004 N’djamena Ceasefire Agreement with the Sudanese government. Resolution 1591 also established a committee and a panel of experts to monitor the arms embargo, designate individuals subject to financial and travel sanctions, and coordinate activities with the ongoing operations of the AU troops.

On December 9, 2005, the panel of experts submitted a report to the UNSC that detailed the current situation in Darfur and gave an overview of the efficacy of the arms embargo. The experts failed to recommend any individuals for targeted financial or travel sanctions, but the report included a confidential annex listing the names of both rebels and government officials impeding the peace process and violating international humanitarian and human rights law. The list, subsequently leaked to the press, includes Sudan’s Interior Minister Elzubier Bashir Taha, Intelligence Chief Salah Abdalla Gosh, and three rebel commanders of the SLM. The list also names five others against whom the panel is allegedly considering recommending sanctions, including Sudanese President Omar Hassan al-Bashir and President Idriss Deby of Chad.

U.S. Ambassador to the UN John Bolton, also president of the UNSC for the month of February, introduced resolutions to impose targeted sanctions on Sudanese individuals. Bolton told reporters that the 15-member body wanted to “move forward expeditiously on targeted sanctions … to apply pressure to people who are violating the arms embargo … and restore the deteriorating security situation there.” Despite this important goal, in its February 26, 2006, closed-door meeting, the UNSC was unable to come to a consensus on implementing the sanctions, which meant that no sanctions were issued. China, Qatar, and Russia are believed to have opposed the sanctions, while Britain, Denmark, France, and the U.S. were likely supportive.

UN Security Council Referral to the International Criminal Court

With the passage of Resolution 1593 in March 2005, the UNSC referred the situation in Darfur to the ICC’s Office of the Prosecutor (OTP) under its Chapter VII peace and security authority. The Darfur crisis is the first situation that the UNSC has referred to the ICC; such referrals constitute one of the few mechanisms through which the ICC can acquire jurisdiction over a territory. Resolution 1593 states that the UNSC

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.

Although Sudan is not party to the Rome Statute and has not accepted the ICC’s jurisdiction, it is now obligated to cooperate with the ICC. Sudanese resistance likely will persist in the face of this decision; President al-Bashir has sworn “before Allah three times” that he will never extradite a Sudanese citizen to any foreign or international court. Arresting responsible officials in Sudan could prove to be another obstacle because the ICC has no independent police force and must rely on the countries that have signed its charter to make arrests. It is possible that a UN peacekeeping force, if established, would be able to arrest individuals. Notably, Resolution 1593 explicitly exempts from the ICC jurisdiction’s all foreign nationals from countries that are not party to the Rome Statute. This clause would prevent any international peacekeeper in Darfur from being tried before the ICC.

These obstacles have not prevented the ICC from moving forward in its investigation of the Darfur conflict. UNSC Resolution 1564 established an International Commission of Inquiry on Darfur (Commission) whose mandate is to investigate human rights abuses and viola-
tions of international humanitarian law, determine whether genocide has occurred, and identify those responsible for these crimes. The Commission’s chairman, Antonio Cassese, led a team to Darfur and is believed to have returned to New York with nine crates of evidence detailing rapes, torture, looting, and mass killings. Cassese passed most of this evidence on to the ICC’s Prosecutor, Luis Moreno-Ocampo. Despite this helpful investigation, the ICC is under no obligation to use the information because it operates independently from the UNSC in bringing prosecutions. When Moreno-Ocampo addressed the UNSC on December 13, 2005, he stated that he had not yet decided whom to seek indictments against.

Another impediment to the OTP’s prosecutions in Sudan is that the ICC’s jurisdiction is complementary to national criminal jurisdictions. The ICC is therefore a court of last resort that can only intervene when it is determined that there has been no genuine national investigation or prosecution of the cases the ICC selects. In June 2005 Sudan established the Special Court for Darfur and identified 160 individuals for prosecution. As of December 2005, the Special Court had conducted six trials involving 26 defendants. Eighteen of these defendants are low-ranking members of the armed forces, and the rest appear to be civilians. There have been only two charges of murder and one of rape; the majority of the charges are for armed robbery, theft, possession of firearms without a license, and intentional wounding. Thus far the Special Court has convicted 13 defendants, resulting in sentences ranging from nine months imprisonment to the death sentence. Although the Special Court represents an important national initiative to hold individuals accountable for the events in Darfur, prosecutions have thus far neglected the widespread and ongoing human rights abuses and violations of humanitarian law occurring in the region. Additionally, the government-backed Special Court has not prosecuted any high-level military or government officials, who many experts believe are behind the attacks. Whether the ICC will succeed in prosecuting these leaders remains to be seen.

UN Peacekeeping Mission

Critics have noted that the AU Mission in Sudan (AMIS) is woefully understaffed. The 7,000-strong mission monitors an area the size of France; many foreign governments and international NGOs feel that a troop level of at least 20,000 is needed for effective peacekeeping in the region. Although the U.S. has declined to send troops to Darfur, it pledged economic and logistical support to the AMIS force and to a Chapter VII UN peacekeeping force if one is created.

It is uncertain whether the UNSC would vote to authorize a Chapter VII peacekeeping force. Some experts have noted that the oil interests of some UNSC members, particularly China, would be best served by peace and stability in the region. This factor may motivate quick action on the issue. Groups such as Human Rights Watch have encouraged the move, noting that a UN peacekeeping force could assist the ICC’s investigations in the region, including the arrest of individuals who might be indicted for crimes against humanity. It could well be that the fear of these potential arrests and of the ICC’s intervention is fueling the Sudanese government’s strong opposition to the deployment of a UN force in Darfur. Analysts also note that the Sudanese government might perceive such a deployment as an invasion of its sovereignty. The UN would therefore experience similar opposition to its presence as it did in Iraq, where opposition groups bombed the UN’s headquarters in Baghdad on more than one occasion.

Further clouding matters is the AU’s reconsideration of its recent decision to hand over AMIS to the UN. Fortunately, the AU did not officially reverse its position, a decision that would have made it politically difficult for the UNSC to authorize a transition to a UN mission. Instead the continental body decided to extend the AMIS mandate until September 2006 and “in principle” to support a transfer to UN forces at that time. Critics argue that the AU’s vague language does not suffice to ensure the presence of UN peacekeepers in the future.

Conclusion

Of the options above, it appears that a peacekeeping force would bring the most effective end to the current atrocities on the ground in Darfur because both UNSC sanctions and ICC prosecutions seem unlikely to have an impact in the immediate future. Desiring effective and immediate action in Darfur, Senators Biden, Brownback, Dodd, Feingold, Lugar, and Obama recently introduced Senate Resolution 383, which calls upon the UNSC to approve and employ a peacekeeping force to Darfur as soon as possible. The resolution also urges President Bush to deploy U.S. troops to support AMIS until a UN peacekeeping force is established and to propose that NATO implement a no-fly zone in Darfur. The UNSC and not the U.S. Senate, however, must decide whether to deploy the Chapter VII peacekeeping troops. Given that the UNSC cannot agree on whether or not to sanction the Khartoum regime, it remains unclear whether it will send more troops to Sudan in September, despite the disturbing increase in human rights abuses and violations of international humanitarian law.

INTERNATIONAL COURT OF JUSTICE UPDATE

ICJ HEARS FIRST CASE OF GENOCIDE AGAINST A STATE PARTY: BOSNIA AND HERZEGOVINA V. SERBIA AND MONTENEGRO

The International Court of Justice (ICJ) is now hearing the first case charging a state with genocide. Citing the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide, Bosnia and Herzegovina filed civil charges against the Federal Republic of Yugoslavia in 1993. Upon the adoption and promulgation of the Constitutional Charter of Serbia and Montenegro by the Assembly of the Federal Republic of Yugoslavia on February 4, 2003, the title of the case was changed to include the name “Serbia and Montenegro.”

Over the past 13 years the case has endured numerous complex procedural hurdles, including several Serbian counter-claims. In February 2006 the Court was ready to begin oral arguments, which it opened to the public. Bosnia and Herzegovina opened its case on February 27, 2006, and Serbia and Montenegro followed on March 8, 2006. Hearings are expected to conclude by May 9, 2006, and a binding ruling is expected by the end of the year. Bosnia could seek billions of dollars in compensation if it wins this case. Many Bosnians feel that justice is finally being served and hope to receive financial compensation for the losses they suffered in the 1990s.

This case differs from those heard at the International Criminal Tribunal for the Former Yugoslavia (ICTY) because ICTY cases involve criminal proceedings against individuals, whereas ICJ cases involve civil disputes between states. Given this differ-

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velopment of an international “crime against democracy.” His analysis and conclusions were subsequently included in the book Protecting Democracy: International Response, published by Lexington Press in February 2005. His pending publications include a paper that he presented at a workshop on crimes against humanity convened at the Oñati International Institute for the Sociology of Law in Bilbao, Spain, entitled “Ending Impunity in the Americas: Role of the Inter-American Human Rights System in Advancing Accountability for Serious Crimes under International Law.” It is forthcoming in Southwestern University’s Journal of Law and Trade in the Americas.

Mr. Tittemore credits WCL for many of his career opportunities in international human rights and humanitarian law. “The faculty members at WCL are among the finest in the world,” he notes. “They challenged me to be exacting and rigorous in my legal work and at the same time encouraged me to push the boundaries, to play a role in shaping the law and advancing the humanitarian values that lie at the foundation of our work. You can’t ask for more than that from a legal education.”

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After the hurricanes along the Gulf Coast in August and September of 2005, AAJC forged ties with and advocated on behalf of Asian communities affected by the storms, many of which are now displaced. Louisiana alone was home to more than 60,000 Asian Americans, more than half of which were Vietnamese. Most of these individuals were refugees and some were undocumented immigrants. In response AAJC has provided a resource page on its website for Asian Americans affected by the hurricanes, helped connect these Asian communities with local legal resources, and written several reports on the situation of these affected communities, which it has shared with law firms and attorneys working along the Gulf Coast.

The Human Rights Brief is accepting submissions for the next edition of “NGO Update.” If your organization has an event or situation it would like to publicize, please send a short description to hrbrief@wcl.american.edu and include “NGO Update” in the subject heading of the message. Please limit your submission to two paragraphs. The Human Rights Brief reserves the right to edit for content and space limitations.

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Stephen J. Schnably, Jonathan S. Simon, and Mark V. Tushnet. Professor Wilson also served as a commentator for a presentation by Aryeh Neier, Director of the Open Society Justice Initiative, on economic, social, and cultural rights at WCL. Professor Wilson and Muneer Ahmad co-authored an editorial in the Toronto Star, “Canada: The Time to Speak on Khadr is Now,” in January. Professor Wilson was interviewed by a Texas Lawyer regarding a profile of two lawyers from Texas defending cases at the International Criminal Tribunal for Rwanda. He was a panelist on “Military Commissions and the Status of Fair Trial Norms” at Amnesty International Lawyers’ Conference, “Fulfilling the Legacy: International Justice 60 Years After Nuremberg,” in Seattle, Washington. In February Professor Wilson was the closing speaker on “Forty Acres and a Mule: Is Property More Important than Happiness?” at the Conference on Poverty and Human Rights sponsored by the International Law Society and National Lawyers’ Guild at George Washington University School of Law. He was interviewed by RadioFrance on the legal situation in Guantánamo Bay and by CanWest about the UN’s report on conditions at Guantánamo, which called for the closing of the U.S. prison, and its impact on the Khadr case. He was a panelist at the “The Inter-American System’s Legal Framework on Torture,” a Training Seminar on the UN and Regional Systems’ Legal Framework on Torture, held at WCL on March 3, 2006. He was an invited expert at the “Working Group Review of Draft Legal Education Reform Index,” organized by the American Bar Association CEELI, in Washington, D.C., on February 28, 2006.

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JUDGES ELECT FIRST FEMALE JUDGE AS PRESIDENT OF THE ICJ

On February 6, 2006, the ICJ elected Judge Rosalyn Higgins as President of the Court and Judge Awn Shawkat Al-Khasawneh as Vice-President, each for a term of three years. Judge Higgins of the United Kingdom is the first female judge at the ICJ and the first to be elected President of the Court. Judge Al-Khasawneh is from Jordan.


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