

Re: Implications of Omar Hassan al-Bashir Indictment

Date: November 10, 2008

From: Annamaria Racota

The call for the indictment of Sudan's president, Omar Hassan al-Bashir [henceforth, Bashir], marks the first time that the International Criminal Court (ICC) has issued an arrest warrant against a sitting head of state on acts of genocide, crimes against humanity and war crimes, since its inception in 2002. Although this move by the ICC is unprecedented, other world leaders, such as Slobodan Milosovic of Serbia and Charles Taylor of Liberia, have been charged by International War Crime Tribunals for the acts of Genocide perpetrated against their own peoples.¹ However, the indictment of Bashir has engendered much controversy and a general apprehension among diplomats, analysts and aid workers due to the precarious situation currently facing Sudan. Although the ICC will not render a decision concerning the indictment of Bashir before January, there seems to be an overwhelming unpopularity associated with the prospective of an indictment. This reaction is largely due to the implications that the indictment could have on the stability of the region, the humanitarian efforts, the ongoing negotiations for peace taking place in Sudan and on the standing of the ICC.

Sceptics consider that the arrest warrant against Bashir is futile because it will only aggravate the situation in the region; it will inevitably lead to the intensification of the war through the expulsion of humanitarian aid workers, and produce an increased number of refugees and displaced people (IDPs). There is clear evidence that the Bashir government is prone to act irrationally and engage in aggressive tactics if the indictment succeeds. The possibility of this occurring is strengthened by the fact that Bashir's movements are currently restricted. The Rome Statute stipulates that all signatories are under a strict obligation "not to provide a safe haven for those under arrest warrants and wanted by the ICC."² Bashir has already tried to exert leverage on the international community by threatening to impede humanitarian aid efforts through the removal of relief workers, Western diplomats, and UN-African Union Peacekeepers in Darfur (UNAMID). Given that humanitarian organizations haven been under strict surveillance and scrutiny by Sudan's Intelligence Agencies – this agency monitors their communications and presides over the issuing of visas and work permits - their expulsion is a real possibility.³ This concern is further evidenced by the fact that foreign aid workers have already been expelled for being suspected of conspiring with the ICC.⁴ The expulsion of relief workers, particularly the UNAMID, threatens to undermine efforts of peace negotiations for two reasons: first, UNAMID is in its final stage of deploying its remaining 17,000 forces in Darfur, in order to assist in

¹ Marlise Simons, Lydia Polgreen and Jeffrey Gettleman, "Arrest is Sought of Sudan Leader in Genocide Case," *The New York Times*, July 15, 2008.

² El Tahor Adam El Faki, comment on "Repercussions of Warrant Arrest Against President Al-Bashir," *SSRC Blog*, comment posted September 11, 2008, <http://www.ssrc.org/blogs/darfur>

³ Lydia Polgreen and Marlise Simons, "The Pursuit of Justice vs the Pursuit of Peace," *The New York Times*, July 11, 2008, Section A.

⁴ Lydia Polgreen and Marlise Simons, "The Pursuit of Justice vs the Pursuit of Peace," *The New York Times*, July 11, 2008, Section A.

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stabilizing the region. The success of the UNAMID in the region depends on these additional forces, and more importantly, on the cooperation of the Bashir government. For this reason, the Tanzanian Minister of Foreign Affairs has stated that pursuing an indictment at this time is ill advised and will jeopardize the efforts of the UNAMID.⁵ Second, the presence of the UNAMID is crucial in continuing to supervise compliance with the 2005 Comprehensive Peace Agreement (CPA).⁶ However, the looming indictment has rendered UNAMID and UNAMIS (the other peace-keeping forces in Southern Sudan) targets of revenge, and has placed the CPA at an even greater risk of unravelling. In particular, UN officials suggest that if these two peacekeeping forces are expelled from Abyei, northern and southern Sudanese troops will resume fighting over the control of the oil-rich region.⁷ This additional factor further emphasizes the security and stability implications of the indictment.

The Bashir indictment also has implications on the standing of the ICC; more specifically, it risks losing the present confidence of the African continent. Africa's dissatisfaction with the action taken by the ICC was evidenced within the meeting of the African Union Peace and Security Council (PSC), held in New York. The meeting confirmed the fears of African Human Rights activists, that as a result of the indictment many African countries would forego their confidence in the ICC and take immediate measures to ensure that the continent will no longer be subject to universal jurisdiction.⁸ During the meeting of the PSC, not a single member state extended its support to the ICC. While Nigeria proposed a deferral in the issuing of the indictment, other countries, namely Algeria and Angola, abandoned any inclination they might have had to ratify the Rome Statute.⁹ The positions taken by the African countries are premised on the notion that the indictment of Bashir and a subsequent change in regime would destabilize Sudan and thus endanger the stability of the continent as a whole.¹⁰ Consequently, leaders of the African Union are discouraged by the inability of the ICC to effectively balance justice with peace and security. The unfavourable reception of the indictment by the PSC begs the question of the likelihood that African countries will be willing, in the near future, to cooperate with the ICC. More importantly, this issue of non-confidence in the ICC raises the

⁵ "Tanzania; Government Firm on Bashir Indictment," Africa News, October 17, 2008.

⁶ Louis Charbonneau, "New Sudan Indictment Could Ruin North-South Peace-UN," Reuters, November 5, 2008.

⁷ Louis Charbonneau, "New Sudan Indictment Could Ruin North-South Peace-UN," Reuters, November 5, 2008.

⁸ Alex de Wall, comment on "Africa's Position on the ICC," SSRIC Blog, comment posted September 23, 2008, <http://ssrc.org/blogs/darfur>.

⁹ Alex de Wall, comment on "Africa's Position on the ICC," SSRIC Blog, comment posted September 23, 2008, <http://ssrc.org/blogs/darfur>.

¹⁰ Alex de Wall, comment on "Africa's Position on the ICC," SSRIC Blog, comment posted September 23, 2008, <http://ssrc.org/blogs/darfur>.

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question of whether this international court will be able to wage prosecutions against human rights violations in Iraq, Chechnya or even Georgia.¹¹

It should be noted that the speculations regarding the possible implications of the Bashir indictment are centered on the tension between trying to achieve justice through the prosecution of criminals, and sustaining peace through diplomatic means. However, the majority of sources have maintained that the argument for diplomacy and peace, as opposed to justice, would be more compelling if previous negotiations between rebel groups had been successful, but peace talks have been at a standstill for some time.

¹¹ Alex de Wall, comment on "Africa's Position on the ICC," SSRIC Blog, comment posted September 23, 2008, <http://ssrc.org/blogs/darfur>.