

What the Warrant Means

Justice, Peace, and the Key Actors in Sudan

By Enough Team February 12, 2009

The issuance of an arrest warrant for Sudan's sitting head of state for crimes against humanity offers the Obama administration a chance to catalyze multilateral efforts to bring about a solution to Sudan's decades-long cycle of warfare. One of the crucial missing ingredients to conflict resolution efforts has been some form of accountability for the horrific crimes against humanity that have been perpetrated by the warring parties in Sudan, primarily the Khartoum regime. Peace without justice in Sudan would only bring an illusion of stability without addressing the primary forces driving the conflict.

The decision by the Pre-Trial Chamber of the International Criminal Court, or ICC, to issue an arrest warrant for Sudanese President Omar al-Bashir is unsurprising given the long pattern of profound abuses in Sudan directed from the highest echelons of government. Over the past several weeks, President Bashir has escalated violence in Darfur and increased human rights violations in Khartoum in a last-ditch effort to force the United Nations Security Council to defer the ICC's investigation for one year "in the interest of peace."¹ However, as Enough argued when ICC Chief Prosecutor Luis Moreno Ocampo requested the warrant in July 2008, the prior indictments of former Liberian President Charles Taylor and former Serbian President Slobodan Milosevic demonstrate that the pursuit of justice can be a catalyst for peace—if the international community stands resolutely behind efforts to promote accountability for genocide and crimes against humanity.² The situation in Sudan is no different. Senior officials within Bashir's National Congress Party, or NCP, are deeply concerned about the possibility of further charges by the ICC, and a growing fissure between Bashir's loyalists and potentially more pragmatic elements of the NCP could lead to the president's removal.

To ensure that any potential leadership change within the regime will actually produce meaningful movement toward peace on the ground, the international community must fashion a firm and coordinated peace strategy conditioned on actions rather than words and policies rather than personalities. What should be clear to the international community, including the United States, is that President Bashir should be delivered to the court to face a fair trial on the charges against him. Furthermore, the international community needs to use multilateral diplomacy, well targeted pressures, and judicious incentives to bring both the NCP and Darfur's rebel groups to the negotiating table, while making a major effort to revitalize the 2005 Comprehensive Peace Agreement, or CPA, as part of a broader and more strategic peace effort for all of Sudan.

How the warrant affects the key actors in Sudan

Sudan is teetering on a dangerous precipice: Violence in Darfur is escalating and CPA implementation is faltering. An NCP-backed coup attempt in neighboring Chad seems increasingly likely. (Rebels supported by Khartoum have reached the capital N'Djamena twice already, in 2006 and 2008). The response of key actors in Sudan to the ICC's move against Bashir is still obviously a work in progress, but the choices made in the coming weeks by the NCP, as well as the main rebel group in Darfur, and the Sudan People's Liberation Movement, or SPLM, will have profound impact on the country's future. Understanding the calculations of these actors is fundamental to leveraging the arrest warrant into progress toward peace.

The National Congress Party

Sudan's ruling NCP has faced substantial pressures both from within and without in anticipation of the warrant against Bashir. Internally, Bashir and his loyalists face growing opposition from a group led by Sudan's Second Vice President Ali Osman Taha, its intelligence chief Salah Abdullah Gosh, and its energy minister Dr. Awad al-Jaz. Tensions between the two camps have been mounting for months, and Gosh blames Bashir and his senior advisor Nafie Ali Nafie for Sudan's increasing international isolation.

With the warrant now out in the open, this jostling between these two main factions will likely intensify and could split the party. Although Bashir, an army general, still commands loyalty within the regular armed forces, this rival alliance is represented by powerful actors in Sudan's political, security, and economic sectors. Taha and Gosh bear significant responsibility for crimes against humanity committed during the regime's 20-year rule, yet they have shown willingness to work with the international community. Taha was the NCP's point person in negotiating the CPA, and Gosh has become the United States' favored interlocutor on counterterrorism. Within a ruling party increasingly focused on its own survival, Bashir may become a sacrificial lamb for a party in search of more pragmatic leadership.

Externally, Bashir's efforts to force a deferral of the ICC investigation have run aground, and the new Obama administration has already raised the possibility of additional punitive measures against the regime. The African Union, the Arab League, and China have all maintained vocal support for a deferral, but the United States' outspoken opposition has effectively neutralized these efforts.

Furthermore, the recent government attacks in Darfur have made it difficult for even some of Bashir's most loyal allies to use their typical arguments while seeking to defer justice. In the weeks leading up to the arrest warrant, some of the regime's most stalwart allies already began distancing themselves from Khartoum. Most important is Egypt, which for years used its influence in the Arab League to rally support for Bashir's government. However, relations between the two countries have cooled since Egyptian President Hosni Mubarak met Bashir in Khartoum in November 2008. According to Sudanese officials, Mubarak called Bashir to task for failing to implement the CPA and for driving the South toward independence, a situation that would complicate maintaining the uninterrupted flow of the Nile River, Egypt's main interest in Sudan. Mubarak also voiced concerns that the Sudanese Islamist movement is the gravest security threat in the region, and blamed the Sudanese government for instability in Chad, and the continued

predations of the Lord's Resistance Army, or LRA. If Egypt expresses a willingness to accept new leadership in Khartoum, other allies in the Arab world will likely follow suit, further weakening Bashir's internal position.

Given these internal and external pressures as well as the regime's historic patterns of behavior, there are three likely scenarios for how the NCP will react to the indictment:

Scenario one—President Bashir opts for confrontation with the international community:

By intensifying the aggressive crackdown in Darfur that he began in Muhajiriya in advance of the warrant, increasing aerial bombardments of civilians, restricting or expelling humanitarians and peacekeepers, stepping up support for Chadian rebels, threatening to withdraw from the CPA, or backtracking on counterterrorism cooperation, Bashir could force the international community to take more assertive action or back down. At the same time, Bashir could work internally to assert firm control of the NCP by jailing opponents, imposing martial law, and increasing military presence in Khartoum and elsewhere. While many humanitarians and U.N. officials have expressed deep concerns about this scenario, it is important to note that such maximalist behavior by Bashir would only serve to further galvanize international support for decisive action against his government.

Scenario two—Internal pressure forces Bashir from office: Given the mounting pressure from within, Bashir could decide to peacefully step aside and cede control to a new NCP candidate, who would participate in the upcoming national elections. Alternatively, rivals within the party could attempt to take power by force. Salah Gosh is one of the strongest advocates for removing Bashir, and Sudan is no stranger to coup d'états. However, Bashir has reportedly told Gosh that he may step down if the divisions within the NCP become irreconcilable. Some Sudanese officials have cited the possibility of exile in Saudi Arabia, which is not a party to the ICC. The new leadership of the NCP could then adopt a more pragmatic approach to the international community by negotiating an end to the war in Darfur and recommitting itself—although unenthusiastically—to the CPA. Bashir's peaceful departure would undoubtedly be in the best interests of the NCP and the country as a whole, but some Bashir loyalists have threatened to kill Vice President Ali Osman Taha if any attempt is made to remove Bashir from power. Here again, it is important to note that after charges were brought against both Charles Taylor and Slobodan Milosevic much was made of the fact that there was no clear mechanism to deliver them to The Hague—yet that is exactly where both men eventually found themselves. This was in large part because in both cases loyalists recognized the increasingly steep cost of resisting international norms on an issue as fundamental as crimes against humanity.

Scenario three—Bashir stalls for time: After years of what the new U.S. Ambassador to the United Nations Susan Rice calls “bluster and retreat,” by the international community, Bashir may well calculate that the pressure arising from the arrest warrant will eventually dissipate. The NCP has weathered heavy external pressure in the past and survived by exploiting the inherent divisions in the international community. It may be entirely possible that Bashir, rather than take dramatic action in response to the warrant, will bide his time, and commit the bulk of his energy and resources to facing internal challenges.

The Darfur rebel groups

Bashir's indictment fundamentally alters the context for Darfur's rebel groups, presenting a rare opportunity for the more politically savvy groups in the region to gain some legitimacy at the expense of the regime. Darfur's most significant rebel group, the Justice and Equality Movement, or JEM, supports the issuance of an arrest warrant. At the same time, however, Mr. Ocampo is pursuing cases against the rebels, and the leaders of the JEM and the various factions of the Sudan Liberation Army, or SLA, have to weigh their support of a warrant for Bashir against the possibility that they are potentially subject to a similar fate.

Given the JEM's dominant military and political status vis-à-vis the other rebel groups, its response to the warrant will strongly influence other rebels. The JEM's recent behavior—renewed military offensives, bellicose threats against the government, and overtures to the international community—suggests that the rebels are keeping their options open. Although the JEM took control of Muhajiriya, South Darfur, by force in late January, the rebels withdrew when Khartoum requested that peacekeepers from the joint United Nations/African Union mission, or UNAMID, leave the area and threatened to level the town. Afterward, JEM leader Khalil Ibrahim met in the Chadian capital N'Djamena with a senior UNAMID official and stated that the JEM is “willing to establish a working relationship with UNAMID for the protection of civilians.”³

The JEM's gesture toward UNAMID, a recent JEM visit to the United States (at the invitation of the outgoing Bush administration), and its decision to participate in “talks about talks” in Qatar suggest a broad effort to present itself as a credible political actor. However, the JEM continues to warn of greater military action down the road, including another attack on Khartoum if Bashir's indictment leads to “chaos.”⁴ Although government forces routed the rebels when they attacked the Khartoum suburb of Omdurman last May, the JEM could seek to rally support for a new offensive meant to remove a president charged with war crimes from power. Provoking a heavy-handed response from the Sudanese government could also be a way to force external actors—particularly the United States—to increase pressure on the regime and potentially take military action to protect civilians against wholesale casualties. Generating a threat of force from the international community to buttress one's own strength is nothing new: The Kosovo Liberation Army used this tactic to great effect during the run-up to NATO's intervention in Kosovo in 1999.

The Sudan People's Liberation Movement

The SPLM is largely in reactive mode, and senior officials within the party disagree on the possible effect of the arrest warrant. Salva Kiir, the president of the Government of Southern Sudan and Sudan's first vice president in the national unity government, is deeply concerned that Bashir's indictment signals the end of the CPA. Other SPLM officials are optimistic that second Vice President Ali Osman Taha will remove Bashir and recommit the NCP to CPA implementation. Taha's influence has diminished since the death of SPLM leader John Garang, and the NCP has sought to undermine CPA implementation. Yet many within the SPLM believe that Taha understands the importance of the CPA to the survival of his party, and that he will make some sacrifices—as he did while negotiating the CPA—to keep the deal on track. If Bashir were to step down, the new NCP leadership would have to work with the SPLM to reorganize the government of national unity, which an interim president would lead until elections and the formation of a new government.

Next steps for the Obama administration

Although no one can accurately predict how various actors in Sudan will respond to the warrant for Bashir, the international community, including the Obama administration can—through effective multilateral diplomacy, a willingness to call Bashir’s bluff, and practical steps to increase pressure on Khartoum in pursuit of a comprehensive peace deal that includes both Darfur and revitalized CPA implementation—make the pursuit of peace the most attractive option for the NCP and Darfur’s rebel groups. The Obama administration’s response to the immediate challenge posed by the warrant should take into account the calculations and possible scenarios discussed above, but it should also flow from answers to broader and more strategic questions: What is the end game? What is the overall strategic goal? And what level of force is the administration and its allies willing to use, if the Sudanese government chooses to escalate confrontation? Answering these big picture questions up front is fundamental since many of the tactical responses to the situation on the ground and arrest warrant could inexorably lead to a much higher stakes game.

A comprehensive policy approach to Sudan must include several components:

- **Consistent high-level diplomacy:** Given the scale and complexity of the crisis in Sudan, the president should appoint a special envoy to serve as the United States’ point person on Sudan policy and lead U.S. efforts to forge a multilateral coalition that supports more robust measures to help end the war in Darfur and ensure full implementation of the CPA. This envoy must have direct access to President Obama, and appropriate staff and resources, including authority over the State Department’s Sudan Programs Group. This envoy would need a dedicated team and sufficient resources to carry out his or her work.
- **Firm messaging to the NCP:** Messages should be conveyed to the key actors within the NCP both publicly and privately. In terms of public messages, the administration should make it clear that it fully supports justice and accountability for Darfur’s genocide, and will not tolerate any obstruction of aid efforts, deployment of UNAMID, or implementation of the CPA. There will be consequences for such actions that will directly affect the leadership of those entities party to the conflict. Behind-the-scenes, the United States must make clear that continued attacks on civilians or peacekeepers, the anticipated proxy coup attempt in Chad, or efforts to cut off humanitarian aid will be viewed as a major escalation of hostilities by Khartoum and will be treated as such by Washington and its allies. Any credible peace effort will demand an unconditional ceasefire and a peace deal in Darfur that includes accountability mechanisms broadly acceptable to Darfuri citizens, real movement on CPA implementation, and the demonstrable return of large numbers of Darfuri IDPs and refugees to a secure environment.
- **Firm messaging to the rebels:** The Obama administration should make clear to Darfur’s rebel groups that it and the international community will apply a common set of standards to all sides of the Darfur conflict. The U.S. envoy should make clear to JEM and others that the international community will hold rebels accountable for crimes against humanity and that attempts to provoke external intervention will be met with consequences.
- **Contingency planning:** The Obama administration must take steps to detach humanitarian and peacekeeping operations from dependence on Khartoum. Contingency plans should be established to reposition all non-life-saving personnel, and to provide life-saving programs in

non-permissive environments. The United States should consider providing air assets and logistical support to facilitate these steps if needed, and Washington's allies should consider similar measures. Too often, UNAMID has been left in the position of pleading with the Sudanese government and rebels not to be a target of attacks. UNAMID should be in a position to respond with decisive force to provocations from any side and to effectively protect civilians. Until it can meet those basic standards, it cannot be considered an effective peacekeeping mission.

- **Clear consequences:** The international community should establish clear consequences if Sudan fails to deliver Bashir to justice. These measures should include rapid escalation of targeted sanctions, an expanded arms embargo, imposition of an oil blockade on Port Sudan, and targeted airstrikes against air assets used by the regime for offensive military operations, with escalating strikes against military and government installations if there is continued intransigence. To that end, the Obama administration should task Pentagon and NATO planners with developing options for a multinational force to carry out the military options outlined above. Such a force could also temporarily buttress UNAMID by providing the robust command-and-control capabilities UNAMID currently lacks and badly needs.
- **Direct diplomacy with the SPLM:** Although more robust measures aimed at Khartoum carry risks to the CPA, the United States ought to reaffirm its commitment to southern self-determination and take advantage of the SPLM's role in the national unity government to encourage more pragmatic elements within the NCP to step forward.
- **Deeper engagement with China:** The Obama administration should engage more deeply with the Chinese to make clear that the U.S. goal in Sudan is stability and lasting peace—goals which Beijing should also support and which the two countries could work together to secure. An American envoy should invite closer collaboration between the United States and China in support of Darfur peace and CPA implementation. Bashir is increasingly an obstacle to those goals and his behavior risks creating more danger and instability for the international community.

An historic choice

The situation in Darfur is changing daily, and it is impossible to predict what will occur in the immediate post-warrant period within the ranks of the NCP and among the key rebel factions. One thing, however, is certain: This is a moment of opportunity during which the United States has a crucially important choice to make. It can help lead the international community in the pursuit of a credible and strategic approach to peace and justice, or it can let the situation worsen absent serious pressure from outside actors. Now is the time for the Obama administration to follow through on its promises to end the crisis in Darfur and lead international efforts toward a peaceful future in Sudan.

Endnotes

1 Article 16 of the Rome Statute of the International Criminal Court provides that “[n]o investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.” The Sudanese government so far has failed in getting Security Council support for a 12-month suspension of the investigation, in large part because of the dismal situation on the ground in Darfur and the government's lack of seriousness in addressing the peace process.

2 See Enough's strategy paper by John Norris, John Prendergast, and David Sullivan, “[The Merits of Justice](#)” (July 2008).

3 See ReliefWeb, “[UNAMID JSR Adada meets with JEM Chairman in N'Djamena, Chad](#),” February 5, 2009.

4 See “[Darfur JEM claims free reign in the region, warns government](#),” *Sudan Tribune*, January 31, 2009.

Enough is a project of the Center for American Progress to end genocide and crimes against humanity. Founded in 2007, Enough focuses on the crises in Sudan, Chad, eastern Congo, northern Uganda, Somalia, and Zimbabwe. Enough's strategy papers and briefings provide sharp field analysis and targeted policy recommendations based on a "3P" crisis response strategy: promoting durable peace, providing civilian protection, and punishing perpetrators of atrocities. Enough works with concerned citizens, advocates, and policy makers to prevent, mitigate, and resolve these crises. To learn more about Enough and what you can do to help, go to www.enoughproject.org.

