

Testimony before the

House Committee on Foreign Affairs, Subcommittee on Africa and Global Health

Sudan: A review of the Administration's New Policy and a Situation Update

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Enrico Carisch

Former Coordinator of the UN Panel of Experts on Sudan
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Mr. Chairman and Members of this Subcommittee:

Thank you for the opportunity to address you today. I am particularly gratified by your continuing interest in Darfur, which is, unfortunately, not matched by much of the world, even in places that talked of little else two or three years ago. While the world's attention may have grown tired of the Darfur story, those who wage war, who cause the destruction of lives and livelihoods of the Darfurians and who abuse the Darfurian women and girls continue to enjoy impunity. Many member states of the UN Security Council that four or five years ago imposed coercive measures on those responsible for the violence in Darfur now seem unwilling to fight back against those who let the abuses continue. Increasingly, it looks like poorly understood and under-enforced UN sanctions are being sold out in favor of mediation whose success is far from ensured.

I had the honor of coordinating the most recent Panel of Experts on Sudan. As you know, the United Nations Security Council imposed an arms embargo on Darfur in 2004, and expanded it via resolution 1591 in 2005. That resolution also created a UN Sanctions Committee on Sudan, charging it with overseeing the sanctions regime by, among other things, monitoring and enforcing its implementation by designating individuals to be subject to travel bans and asset freezes. The same resolution created the Panel of Experts to be the eyes and ears, on the ground in Sudan and in the region, of the Sanctions Committee.

The Darfur arms embargo does not apply to the entire territory of the Sudan, only to the three Darfur States. Unlike other monitoring teams mandated by the Security Council in Liberia, Cote d'Ivoire, the Democratic Republic of Congo, and Somalia, the Sudan Panel has also a robust mandate to monitor compliance with international humanitarian and human rights law—and to report those who violate such laws. The Panel is tasked with reporting on those who impede the peace process, constitute a threat to stability in Darfur and the region, and are responsible for offensive military overflights.

All of these obligations have been fulfilled by the most recent Panel, as well as by our predecessor Panels. Since January 2006, a total of six reports detailed technical evidence of massive violations of the arms embargo, and excruciating proof of abuses of the human rights of Darfurians and ongoing violations of international humanitarian laws.

I am very grateful to Chairman Payne and the members of this Subcommittee who allowed me to come here to talk to you about our findings and about the lack of implementation and enforcement of the UN sanctions. I would also appreciate it if I could submit for the record written information,

including the summary of the latest report of the UN Panel of Experts on the Sudan, made public on November 5, 2009. The whole report may be found here: <http://www.un.org/sc/committees/1591/reports.shtml>.

This recent report presents evidence of the following eight categories of abuses, among others: **First**, most of the armed actors commit widespread violations of the arms embargo. The military, security and auxiliary forces of the Government of the Sudan and the combatants of the Justice and Equality Movement are the worst offenders. Our report has earned public condemnation by both the Government of Sudan and the Justice and Equality Movement. The Government of the Sudan called for the termination of the Panel's mandate.

Second, as in previous years, some arms and the majority of ammunition documented by the Panel in Darfur in violation of the arms embargo originate from Chinese manufacturers. To date, the Panel has received minimal cooperation in response to our requests to the Chinese authorities and from the specific manufacturers for information that might assist in the tracing of this materiel to the actual embargo violators. That is, while most of this embargoed materiel was manufactured in China, it may have been legally delivered to the territory of the Sudan not under embargo. It is therefore possible that the government or nationals of another country are responsible for transporting them into Darfur. Given the multiple Panel reports over the past years that documented military goods in Darfur of Chinese origin, it is unlikely that the Government of China is not aware of the high risk that this materiel might become part of UN arms embargo violations. Because of the spotty cooperation of the Chinese government and of Chinese corporations these arms embargo violations are much harder to stop, and for the Panel it is much more difficult to identify the actual embargo violators.

Third, international humanitarian and human rights laws that should protect Darfurians are still not respected; victims find no redress in the courts; nor are they given compensation; and perpetrators enjoy full impunity.

Fourth, in the fighting between the belligerents and the Government of the Sudan, too frequently disproportionate force is still used, resulting in indiscriminate killings, injuries and mass displacements of civilians.

Fifth, the Panel has made a special effort to interact with hundreds of Darfurian women and girls to assess their situation. Every one of these women told the Panel that the greatest threat to them continues to be sexual and gender-based violence. Every time Darfurian women pursue their livelihood activities outside their IDP camps they risk being raped or otherwise harassed.

Sixth, almost all armed parties to the conflict use child soldiers and none has demonstrated to the Panel that they have functioning mechanisms in place to prevent these abuses.

Seventh, Darfurians are still legally and illegally detained or arbitrarily arrested by the National Intelligence and Security Services of the Sudan. The detainees are interrogated and subjected to torture and physical abuse, which includes but is not limited to: severe beatings and hitting with hands, fists and boots as well as other objects, flogging with rubber hoses, burning with coil heaters and other electric instruments, forced swallowing of extremely hot water, sleep deprivation, and being suspending by ropes in stress positions.

Eight, while the Government of the Sudan claims that all Janjaweed have been disarmed as required by Security Council resolution 1556, passed more than five years ago in 2004, no official accounting or reporting on this subject has ever been issued. The Panel has found strong evidence, including written battlefield orders, for the continued engagement of Arab tribes as auxiliary forces of the Sudanese military in Darfur.

Despite this long list of alarming evidence that the will of the international community is being ignored, the resolve to enforce this will is decreasing. This decreasing resolve is most visible in the

inadequate protection of the integrity of independent UN monitoring. During the most recent mandate, which ran from 11th December to October 15th 2009, the Government of the Sudan denied an entry visa to the arms expert of the Panel on the basis of completely fabricated reasons. That expert consequently resigned from the Panel. Once the Panel was able to work in Sudan we were denied access to the locations where the most vigorous fighting had taken place in the previous 12 months, even when the violence had ended weeks before our arrival. Of a total of 70 issues that the Panel raised in writing with the Government of the Sudan, 55 have not received a response.

Sadly, the Government of Sudan was not the only obstacle to the integrity and thoroughness of our work. For over two months, the UN delayed granting the Panel access to the Sudan and Darfur for alleged security reasons. Other independent monitoring mechanisms of the international community have been disbanded or have been reorganized as joint mechanisms with the Government of the Sudan. Under the intense pressure by the Government of Sudan the mandate of the Group of Experts from the Human Rights Council was not extended in November 2007. The mandate of the UN Rapporteur on the Human Rights situation in Sudan, Ms. Sima Samar, was abolished last summer on the demand of the Sudanese Government and its political allies at the Human Rights Council. Her mandate was replaced by the newly established mandate of the UN Independent Expert on the situation of human rights in Sudan. That mandate of Judge Mohamed Chande Othman of Tanzania, however, restricts him to focus only on the work of the Human Rights Forum – a joint operation between the Government of Sudan and UNAMID. UNAMID, in turn, is unable to protect even its own Darfurian employees from severe human rights violations committed by the National Intelligence and Security Services.

The UN must accept responsibility for some of these problems. It has insufficiently secured the integrity and independence of its operations, and has allowed the relentless pressure from the Government of the Sudan to overwhelm the weakened management of the UNAMID peacekeeping force and its other bodies who should operate for the benefit of the Darfurian population.

Since the inception of the Panel of Experts on the Sudan, there have been close to 100 recommendations designed to improve UN sanctions and to better achieve the overall objective of peace and security for Darfur. None of the substantive proposals have been taken up by the Security Council and only minor changes, such as adding one expert to the Panel, were implemented.

In the most recent report, you will find only a modest three recommendations – all of them tailored to facilitate consensus among the deeply fractured Security Council and to remind its members—including the United States—of its previously adopted resolutions and demands. Had this year's Panel not decided to take a course of pragmatism, our list would have been far longer. In other words, there is much to do to enforce the embargo and eliminate human rights abuses in Darfur, as nearly ninety pages of the report make clear. Our recommendations are merely the first and most practical steps.

The first recommendation asks that the Government of the Sudan be required to report regularly on:

- a. Movements of its troops and military materiel into and out of Darfur. Under paragraph 7 of resolution 1591 adopted in 2005, such movements must be approved in advance by the UN Sanction Committee. No request for approval has ever been submitted to the Sanctions Committee by the Government of the Sudan, which has previously stated that it will not abide by this demand.

- b . The identity and size of the Janjaweed forces that must be disarmed, and to what degree that they have been successfully disarmed and reintegrated into the population of Darfur. This was required by paragraph 6 of UN resolution 1556 adopted in 2004.
- c. Progress towards establishing provisions that will enhance the protection of all Darfurians located within the territory under the control of the Government of the Sudan.
- d. Achievements in or possible requirements for improving the prevention of gender-based violence.

In its second recommendation, the Panel merely reiterates calls already made by the Security Council in its Presidential Statement of 8 May 2009 and by the Dakar Agreement between Chad and Sudan of 13 March 2008, for the establishment of a Chad-Sudan joint border monitoring mechanism.

The third and last recommendation reminds the Security Council that the private sector bears some responsibility for the crisis in Darfur. The Panel suggests that in conjunction with the UN Global Compact, improved due diligence guidelines and standards be developed in order to ensure that companies and their products or services will not, knowingly or not, end up supporting violators of UN arms embargos.

Finally, the Panel has also provided a confidential annex that contains recommendations of individuals who should be placed under targeted sanctions. These measures include asset freezes and travel restrictions. Because this document is confidential, I cannot discuss it here but refer you to your UN delegation for further information.

I can assure you that of all the Security Council monitoring mandates I have participated in—in Liberia, the Democratic Republic of the Congo, Somalia, and the Sudan—the fate of this most recent report and its recommendations is among the most extraordinary. It quite common that some members of the Committee are opposed to holding a full discussion of the findings presented in a report or that they block discussions of the recommendations made by a Panel. Such attempts to suppress a constructive dialogue are a reflection of the complexities of today's Sanctions Committee dynamics.

What is surprising is that none of the original sponsors of the Darfur resolutions, that after all are the basis for the mandate of the Panel of Experts, are fighting back against those who oppose a full discussion. What is surprising is no new and strengthened measures can be found in the new resolution 1891 (2009) that provides for a new mandate of the Panel. It is almost identical to the one adopted a year ago, and that one already resembled the previous mandate. The lack of adjustment to new emergencies and the inability to stand on the principles previously decided and adopted is sending a loud signal to the Darfurians: The Security Council and member states, including the United States, are not coming to help.

Imposing sanctions only to fail to enforce them is destructive and counterproductive to the policy goals that motivated the sanctions in the first place. Making such empty threats endangers the lives of those who need protection, and it tends to escalate violence because the perpetrators feel emboldened by the paralysis of the international community. Failing to enforce sanctions also jeopardizes peacekeepers and other members of the international community who are deployed in the conflict area. It simply makes a mockery of everyone associated with sanctions—including the U.S. government, whose firm leadership made those sanctions possible in the first place.

In contrast to that leadership of 2004 and 2005, the United States appears to have now joined the group of influential states who sit by quietly and do nothing to ensure that sanctions work to protect Darfurians.

On the other hand it is encouraging that the US Government is seeking dialogue with the international community. It is important that General Scott Gration is working with other leaders of the international community towards shared objectives. It is important that China is an active partner in this dialogue and that we have an opportunity to listen to its leaders' thoughts and objectives for Darfur. But all these good intentions and adjustments to the new global realities of the multilateral world should not hinder the US from leading in support of basic human rights and humanitarian principles. These principles—as well as evidence that they are being violated and the need to take action against those violations—should be the subject of discussion every time General Gration talks with international counterparts about their shared objectives.

If the US does not speak out on behalf of the millions of Darfurians who still suffer in IDP and refugee camps, nobody will. If the US does not insist on effective protection of the women and girls of Darfur, the Government of the Sudan will continue to neglect this important responsibility as it already does with the children who are forced to serve as soldiers. The US must press the effective enforcement of UN sanctions to put pressure on the officials of the Government of Sudan, the leaders of JEM, SLA and of other regional rebel and militia groups into changing their behavior. Indeed, sanctions that are enforced will support, not undermine, the mediation that is the focus of US policy in Sudan.

If applied properly, UN sanctions are the international community's most powerful tool for maintaining and restoring international peace and security short of the use of force. Any effective conflict resolution strategy must include disincentives as well as incentives. Experience has shown that individual targeted sanctions (such as an assets freeze and travel ban) have a restraining effect on perpetrators. A congressionally mandated report by the US Treasury Department's Office of Foreign Assets Control, published in January 2009, reported that US sanctions on Sudan—which include targeted sanctions—have indeed been effective.

This report concludes that U.S. sanctions against Sudan have applied constructive pressure that has affected key Sudanese officials' decision-making calculi. This pressure, along with other sources of pressure exerted by the U.S. government, has served to advance the primary goals of U.S. policy toward Sudan.

(OFAC, "Report to Congress January 2009: Effectiveness of U.S. Economic Sanctions with Respect to Sudan," http://www.treas.gov/offices/enforcement/ofac/programs/sudan/sudan_report_030509.pdf.)

Over the course of more than four years of the UN sanctions on the Sudan, only four persons have been designated for targeted sanctions and none of the measures applied against them were ever enforced. This paucity of enforcement is typical of UN sanctions in general. It has a number of causes, chief among them insufficient political will among the various actors. This lack of will is attributable to competing political and economic agendas among the most powerful states; widespread misperceptions about the nature and purposes of sanctions, in particular a lack of appreciation of its valuable role as a negotiation and bargaining tool; lack of integration of sanctions with other conflict resolution measures; lack of a unified UN sanctions policy; and inadequate cooperation among various UN bodies. In addition, there is a disproportionate concern among many states and other actors regarding the due process rights of alleged perpetrators. This concern is legitimate, but should not displace the concern for the security and well-being of populations whom sanctions are designed to protect.

I hope that the preceding testimony has offered a number of specific ways in which US and international policy can better ensure that promises are kept, human rights abuses do not go unaddressed, and the people of Darfur do not continue to slide off the world's radar screen. It is

important that the belligerents and the government of Sudan are not given an opportunity to play the sanction enforcement mechanism against the mediation teams. To accomplish that sanctions and mediation must work in tandem to bring an end to the conflicts in Darfur. The following specific actions should be taken by the US Government before it extends further incentives to the signatories and non-signatories of the Darfur Peace Agreement:

- 1) Insist on full cooperation by the Government of Sudan with the sanction monitoring mechanism, including the issuance of visas without delays, to the next Panel of Experts.
- 2) Insist that all parties to the conflict, in particular the Government of the Sudan, reply comprehensively and transparently to the requests for information made by the Panel during its recent mandate.
- 3) Insist that all parties to the conflict, in particular the Government of the Sudan, provide safe access to all the locations that the Panel must inspect as part of its monitoring activities. These should include locations where fighting has taken place as well as locations where Darfurians are detained.
- 4) Encourage the Government of China and others that are critical to the successful implementation of the arms embargo in Sudan to cooperate actively in all aspects of the Sanction Committee and the Panel of Experts.

By adhering to these benchmarks the US Government can begin to demonstrate that while the world may suffer from Darfur-sanction fatigue, it will not surrender the Darfurians in the mediation processes.

Thank you for your interest in this ongoing problem and the efforts of the Panel of Experts to provide useful evidence and recommendations. I look forward to your questions.