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SOURCE: KODAKD.001085

DRAFTED BY: IO:UNPS AMADEO:SA -- 01/31/05 (202) 647-0042

APPROVED BY: IO:KRHOLMES

AF:TSMITH IO/PSC:RMORAN IO/UNP:JWARLICK IO:JSWIGERT

P:KDEGNAN S/WCI:P Prosper RM/FA:LMARCHETTI

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UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: JOHN S BLODGETT  
DATE/CASE ID: 30 JUL 2007 200701033

C O N F I D E N T I A L STATE 018243

E.O. 12958: DECL: 01/30/15

TAGS: PHUM, KPKO, ETC, ETRD, PREL, SU

SUBJECT: GAINING AFRICAN SUPPORT FOR SUDAN ACTION IN THE UNSC

REF: A) STATE 9941 B) STATE 16403

CLASSIFIED BY IO A/S KRHOLMES, REASONS 1.4(B) AND (D).

1. (U) Ambassadors at action addressee posts are requested to deliver the points and concept paper contained in paragraph 7 at the highest possible level as soon as possible on February 1. Embassy Addis Ababa should deliver points to the African Union Secretariat. Our strategy now is to focus on building African support. Other Non-African Security Council capitals and Algiers should delay demarche until Wednesday, February 2, so as not to get ahead of Security Council discussions in New York. We will provide additional guidance to Security Council capitals septel after Council consultations in New York.

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## NEED FOR AFRICAN SUPPORT FOR UNSC SUDAN RESOLUTIONS

2. (C) UN Security Council (UNSC) action on Sudan is moving forward quickly this week in New York on two tracks: 1) We have already begun sharing with key UNSC members and African delegations in New York the text of our draft Sudan resolution on the authorization of a UN peacekeeping force and the imposition of targeted sanctions (ref B); and 2) we plan to circulate February 1 a draft resolution on the formation of a hybrid African Union (AU)-UN Sudan Tribunal to bring to justice those most responsible for violence and atrocities in Darfur (septel).
3. (C) These resolutions reinforce and expand on the role that the AU has played in bringing an end to both the conflict in Darfur and the North-South. The authorization of a peacekeeping force for Sudan that will extend to Darfur supports the role of the African Union Mission in Darfur; the formation of an AU-UN Sudan Tribunal will strengthen African capacity to address war crimes issues. Public African support in New York for our UNSC draft resolutions is critical, as is African support for a UNSC press statement on the Darfur Commission of Inquiry findings and recommendations that were released late January 31 in New York.

## PEACEKEEPING FORCE

4. (C) The draft UNSC resolution calling for the formation of a peacekeeping force demonstrates international commitment to monitor and assist with the transitional process in Sudan, focused on the North-South region following the signing of the Comprehensive Peace Agreement January 9 in Nairobi, Kenya (ref b). We also expect that the presence of UN peacekeepers monitoring the north-south peace agreement will have a positive effect on the conflict in Darfur and will help move the parties to the Darfur conflict to conclude a political agreement for Darfur based on the North-South framework. This peacekeeping force would thus begin deployment to the North-South, but would be mandated with planning and preparing for deployment to Darfur as soon as appropriate. We believe this will send to the UN the strong signal that the PKO must extend to Darfur, and this would also be setting the stage for rapid deployment and bluehatting of the AU force into the UN force (ref a).

## TARGETED SANCTIONS

5. (C) The serious ceasefire violations and continued attacks against civilians in Darfur by all parties to the conflict there, as well as the parties'

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failure to comply with their commitments and the demands of the Council set out in UNSC resolutions 1556, 1564, and 1574, have caused us to act upon the threat of sanctions laid out in these resolutions. The draft UNSC resolution being circulated extends the arms embargo contained in resolution 1556 to all of Sudan, including the Government of Sudan, and imposes targeted sanctions (travel ban and assets freeze) against those who impede the peace process in Darfur and commit violations of international humanitarian or human rights law or other atrocities. The purpose of these measures is to pressure the parties to comply with their commitments on Darfur. In order to give the parties sufficient time to demonstrate such compliance, the draft resolution contains an allowance for a 30-day interim period after adoption before the travel and an assets freeze enter into force. The extension of the arms embargo would take affect immediately upon adoption.

#### ACCOUNTABILITY

6. (C) The UN's Commission of Inquiry (COI), whose report was released January 31, has determined that war crimes have been perpetrated in Darfur. It did not find acts of genocide, but said that the crimes against humanity committed were no less serious. The COI recommended that the Sudan atrocities be referred to the **International Criminal Court (ICC)**. We do not support the ICC and will circulate a draft UNSC resolution February 1 that would establish a hybrid AU-UN Sudan Tribunal to investigate and prosecute those responsible for violations of international humanitarian law. Paragraphs 8-10 provide a more detailed background on this Tribunal concept.
7. (C) Ambassadors at addressee posts are requested to make the following points at the highest level possible as soon as possible:
  - The UNSC continues to actively support the pursuit of peace in Sudan - both in context of the North-South peace process and in Darfur.
  - Our focus on Sudan action in the UNSC is to continue to support the African Union's leadership role in Sudan. Therefore vocal African support for our UNSC action and draft resolutions would be extremely helpful. We urge you to speak out in New York, in the Council, and with UNSC members supporting our draft resolutions.
  - We urge you to impress in New York the importance of fully exploring the AU-UN Sudan Tribunal concept.

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- At the same time, we urge you to support a call in New York for a UNSC press statement on the Commission of Inquiry report.
- We have begun to circulate the text of a draft resolution authorizing the formation of a UN peacekeeping operation and the imposition of targeted sanctions against those responsible for violence and atrocities in Darfur.
- We plan on circulating as soon as February 1 a draft resolution creating a hybrid AU-UN Sudan Tribunal to investigate and prosecute those most responsible for violations of international humanitarian law.
- The African Union and the African Union Mission in Darfur continue to play a crucial role in ending the conflict in Darfur. The Mission's military and observer role in Darfur is key, as is its political role in bringing the parties to the conflict in Darfur together for peace talks.
- We intend that the draft peacekeeping/sanctions resolution and the draft Sudan Tribunal resolution reinforce this integral role the AU is playing in Sudan.
- The January 9 signing of the Comprehensive Peace Agreement has created the appropriate conditions for the UNSC to consider authorization of a UN peacekeeping operation (PKO).
- We believe a significant portion of the PKO's forces should be focused on Darfur. The draft resolution requires the UN to develop a military analysis and planning assessment within 60 days for the extension of the PKO to Darfur. This PKO must extend to Darfur when the conditions are appropriate and would work in coordination with the AU Mission and provide planning and logistical support as need to the AU mission.
- All parties to the conflict in Darfur are responsible for continued ceasefire violations. They continue to undermine the April 8 N'djamena Ceasefire Agreement and the November 9 Abuja protocols.
- The UNSC must uphold its threat and support targeted sanctions on the parties failing in these commitments. UN SYG Kofi Annan indicated at the AU Summit in Abuja that sanctions remain an integral tool.
- The draft resolution calls for the imposition of a travel ban and assets freeze against those who impede the peace process in Darfur and violate

international humanitarian or human rights law.

The purpose of these measures is to pressure the parties to comply with their commitments on Darfur. In order to give the parties sufficient time to demonstrate such compliance, the draft resolution contains an allowance for a 30-day interim period after adoption before the travel and an assets freeze enter into force. The extension of the arms embargo would take effect immediately upon adoption of the resolution.

We welcome the report of the Commission of Inquiry. We share a deep concern about the violence and atrocities in Darfur. We strongly support a call for accountability. African involvement in the resolution of the war crimes

issues is key to strengthening African capacity to address other such cases on the continent. Therefore, we strongly support the formation of an AU-UN Sudan Tribunal.

8. (U) AU-UN Sudan Tribunal Concept paper:

Overview

- We share deep concern about the on-going human rights violations and atrocities in Darfur and strongly support a call for accountability for those responsible for these crimes. We suggest that a Sudan Tribunal, created and mandated by a UN Security Council resolution and administered by the UN in conjunction with the African Union (AU) would provide for this accountability. The AU has played a critical leadership role in international efforts to resolve the conflict in Darfur; this type of court would allow the AU to continue that leadership role as accountability is pursued and would also contribute to development of the AU's overall judicial capacity on the continent. We think this approach is more appropriate than referral to the ICC as it takes full account of and reinforces the AU role in addressing the Darfur conflict.

Mandate

Under Chapter VII of the UN Charter, the proposed Sudan Tribunal would have authority to prosecute those individuals most responsible for serious violations of international humanitarian law committed in Darfur from January 1, 2003 to the present. The Tribunal would operate for 3-5 years, renewable annually as needed.

Infrastructure and Personnel

The Tribunal would be based in Arusha, Tanzania, and

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would share the existing physical infrastructure of the International Criminal Tribunal for Rwanda (ICTR). Additional infrastructure would be provided as necessary. This would allow the court to begin operations without delay. The Tribunal will have its own judges, Registrar, and Prosecutor. Personnel would be appointed by the UN Secretary-General in

coordination with the AU. There would be both international staff members and AU staff members involved. Countries could second additional international staff to the Tribunal on a voluntary basis.

#### Funding

Start-up costs for the Tribunal's first 6-8 months of operations is estimated at \$30 million. As the Tribunal becomes fully operational, we anticipate that the costs could rise to as much as \$100 million annually, depending on the number of seconded international staff, infrastructure needs in Arusha, and the number of indictees/trials. Our preferred funding option for the Tribunal is UN assessed contributions. Any court that takes on Sudan war crimes would require an expansion of its staff and budget. The ICC, for example, has a limited presence in Africa, and this staff is occupied with the Uganda and Congo investigations. The ICTR, in contrast, has extensive infrastructure on the ground, and it has established relationship agreements with governments throughout the continent. We therefore do not see a significant difference in cost between the ICC and an AU-UN hybrid court; in fact, the hybrid court may be less costly.

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