

Fordham International Law Journal

Volume 31, Issue 4

2007

Article 9

Pressuring Sudan: The Prospect of an Oil-for-Food Program for Darfur

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Pressuring Sudan: The Prospect of an Oil-for-Food Program for Darfur*

Russell P. McAleavey

Abstract

This Note examines whether Justice Goldstone's proposal for an oil-for-food program is feasible in today's international political climate and whether it would be effective in curtailing the violence and aiding civilians in Darfur. Part I begins by examining the reasons behind China's reluctance to support international initiatives to achieve peace in Darfur. Part II discusses the U.N. Oil-for-Food Program in Iraq and outlines proposals for avoiding problems that plagued that program. Finally, Part III takes into consideration the political and logistical difficulties that are likely to arise from the institution of an oil-for-food program in Sudan, and concludes that such an initiative would be a politically feasible method of placing significant pressure on the Khartoum regime.

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NOTE

PRESSURING SUDAN: THE PROSPECT OF AN OIL-FOR-FOOD PROGRAM FOR DARFUR

*Russell P. McAleavey**

INTRODUCTION

On June 11, 2004, the United Nations ("U.N.") Security Council formally recognized the deepening state of crisis in Darfur by voting unanimously to send an advance team to southern Sudan to prepare for a peace-keeping mission.¹ Since then, the Security Council has passed another thirteen resolutions focused on ending the violence in Darfur and bringing perpetrators of human rights violations to justice.² These efforts have

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1. S.C. Res. 1547, U.N. Doc. S/RES/1547 (June 11, 2004); *see also* Press Release, Security Council, Security Council Endorses Establishment of 3-Month Advance Team in Sudan to Prepare for U.N. Peace Support Operation, U.N. Doc. SC/8120 (June 11, 2004) (announcing unanimous adoption of Security Council resolution 1547, authorizing deployment of advance team to Sudan to prepare for future United Nations ("U.N.") peace/support operation).

2. S.C. Res. 1769, U.N. Doc. S/RES/1769 (July 31, 2007) (creating African Union ("A.U.)/U.N. hybrid operation in Darfur ("UNAMID")); S.C. Res. 1755, U.N. Doc. S/RES/1755 (Apr. 30, 2007) (extending mandate of U.N. Mission in Sudan ("UNMIS")); S.C. Res. 1709, U.N. Doc. S/RES/1709 (Sept. 22, 2006) (extending mandate of UNMIS); S.C. Res. 1706, U.N. Doc. S/RES/1706 (Aug. 31, 2006) (expanding mandate of UNMIS to use all necessary means to protect civilians); S.C. Res. 1679, U.N. Doc. S/RES/1679 (May 16, 2006) (threatening sanctions against any group hindering enforcement of Darfur Peace Agreement ("DPA")); S.C. Res. 1672, U.N. Doc. S/RES/1672 (Apr. 25, 2006) (imposing sanctions on four Sudanese nationals accused of war crimes); S.C. Res. 1663, U.N. Doc. S/RES/1663 (Mar. 24, 2006) (asking Secretary-General Kofi Annan to expedite transition from A.U. to U.N. mission in Darfur); S.C. Res. 1593, U.N. Doc. S/RES/1593 (Mar. 31, 2005) (referring perpetrators of human rights abuses in Sudan to International Criminal Court ("ICC")); S.C. Res. 1591, U.N. Doc. S/RES/1591 (Mar. 29, 2005) (ordering travel ban and freeze on all assets for human rights violators in Sudan); S.C. Res. 1590, U.N. Doc. S/RES/1590 (Mar. 24, 2005) (establishing UNMIS); S.C. Res. 1574, U.N. Doc. S/RES/1574 (Nov. 19, 2004) (reporting results of special meeting in Nairobi to secure end of violence in Darfur); S.C. Res. 1564, U.N. Doc. S/RES/1564 (Sept. 18, 2004) (noting Sudanese government's failure to disarm Janjaweed militia, provide security for civilians, and bring perpetrators of violence to justice); S.C. Res. 1556, U.N. Doc. S/RES/1556 (July 30, 2004) (imposing arms embargo on all non-governmental combatants in Darfur).

produced little progress on the ground, however, as stories of horrific violence and forced migration continue to emerge from the region.³ Human rights organizations have increasingly blamed the international community, and China particularly, for failing to contain the violence and provide meaningful humanitarian support to the people of Darfur.⁴ Critics allege that China's economic ties to Sudan have led it to shield the Sudanese government from meaningful international intervention that could prevent further atrocities and assist displaced individuals.⁵

This lack of progress led former South African Constitutional Court Justice Richard Goldstone, a member of the Independent Inquiry Committee ("IIC" or the "Committee") into the U.N. Oil-For-Food Program (the "Program"),⁶ to propose an oil-for-food program as an effective means of depriving the Sudanese government of the funds it uses to perpetuate violence in Darfur, without harming China's strategic economic interests.⁷

3. See, e.g., Amnesty Int'l, *Sudan: Arms Continuing to Fuel Serious Human Rights Violations in Darfur*, 11-24, AI Index AFR 54/019/2007, May 8, 2007 (describing continued flow of illicit arms into Darfur, in violation of U.N. arms embargo); Alfred de Montesquiou, *Darfur Town Held by Army Is Burned*, WASH. POST, Oct. 8, 2007, at A18 (discussing incident where Sudanese government troops razed Darfur town in apparent retaliation for suspected rebel attack); Jeffrey Gettleman, *Witnesses Describe Another Massacre in Southern Darfur*, INT'L HERALD TRIB., Oct. 18, 2007, at 7 (reporting recent killing of over thirty civilians by Sudanese government forces and allied Janjaweed militias).

4. See, e.g., Anna Badkhen, *Sudan Sanctions Called Inadequate*, S.F. CHRON., May 30, 2007, at A3 (citing expert opinion that, to be effective, any sanctions on Sudan need backing of permanent U.N. Security Council members, particularly China); Charles Whelan, *China Unlikely to Bow to Critics on Darfur*, AGENCE FR. PRESSE, May 21, 2007, available at <http://www.globalpolicy.org/security/issues/sudan/2007/0521bow.htm> (detailing international condemnation of China for allegedly shielding Sudanese government from sanctions and abetting genocide in Darfur); Patrick Goodenough, *China Accused of Prolonging Sudan Bloodshed Because of Oil*, CNSNEWS.COM, Apr. 11, 2006, <http://www.cnsnews.com/ViewForeignBureaus.asp?Page=/ForeignBureaus/archive/200604/INT20060411c.html> (noting criticism that China's support for Sudanese government has prevented Security Council from taking measures that could bring end to violence in Sudan).

5. See, e.g., Goodenough, *supra* note 4 (stating popular criticism that China's oil interests in Sudan have prompted it to support Khartoum regime and "water down" Security Council resolutions); Save Darfur Coal., *China, Sudan and the Darfur Conflict Fact Sheet*, http://www.savedarfur.org/pages/china_sudan_and_the_darfur_conflict_fact_sheet (last visited Mar. 15, 2008) (observing that China is largest player in Sudan's oil industry, largest foreign investor in Sudan, and Sudan's largest trading partner).

6. For more detailed information on the Independent Inquiry Committee ("IIC") into the United Nations Oil-for-Food Program, see its website at <http://www.iic-offp.org/>.

7. Richard Goldstone, Op-Ed., *An "Oil-for-Food" Program for Darfur*, INT'L HERALD

This Note examines whether this proposal is feasible in today's international political climate and whether it would be effective in curtailing the violence and aiding civilians in Darfur. Part I begins by examining the reasons behind China's reluctance to support international initiatives to achieve peace in Darfur. Part II discusses the U.N. Oil-for-Food Program in Iraq and outlines proposals for avoiding problems that plagued that program. Finally, Part III takes into consideration the political and logistical difficulties that are likely to arise from the institution of an oil-for-food program in Sudan, and concludes that such an initiative would be a politically feasible method of placing significant pressure on the Khartoum regime.

I. CHINA'S ROLE IN THE DARFUR CRISIS

This Part begins by discussing China's economic and political relationship with Sudan. It then examines the effect of that relationship on China's actions in the Security Council. Finally, this Part discusses the increased pressure China faces from the international community and human rights organizations to use its influence with the government of Sudan to end the violence in Darfur.

A. China's Ties to Sudan

As China has transformed itself from an insular, largely agrarian society into a major player in the global economy, its increasing appetite for raw materials has led it to pursue relationships with so-called "rogue" nations that the Western world has shunned.⁸ To compete with the multinational titans of the energy industry, Chinese oil companies must invest in areas where Western companies are not able or willing to go.⁹ This

TRIB., June 13, 2007, at 4 (promoting a potential "oil-for-food" program for Darfur as way of instituting sanctions without harming China's strategic interests in Sudan).

8. See Peter Hatemi & Andrew Wedeman, *Oil and Conflict in Sino-American Relations*, CHINA SECURITY J., Summer 2007, at 95, 108-09 (noting China's efforts to secure oil supplies from regimes unfriendly to United States, such as Iran, Sudan, and Venezuela); Peter S. Goodman, *China Invests Heavily in Sudan's Oil Industry; Beijing Supplies Arms Used on Villagers*, WASH. POST, Dec. 23, 2004, at A01 (describing China's deep commercial relations with Sudan).

9. See Erica S. Downs, *The Fact and Fiction of Sino-African Energy Relations*, CHINA SECURITY J., Summer 2007, at 42, 58 (acknowledging that China National Petroleum Company ("CNPC") took advantage of Sudan's north-south civil war and U.S. sanctions to establish foothold in Sudan); Piet Konings, *China and Africa: Building a Strategic Part-*

strategy has been particularly successful in Sudan, China's largest overseas oil project.¹⁰

On June 1, 1997, China National Petroleum Company ("CNPC") formally took ownership of a forty percent share of the Greater Nile Petroleum Operating Company ("GNPOC"), a consortium that presently dominates oil production in Sudan.¹¹ Under the operational management of CNPC's Zhou Jiping, GNPOC transformed Sudan from a nation dependent on foreign energy supplies into an oil exporter.¹² These developments, however, coincided with Sudanese military attacks on unarmed civilians to clear a 100-kilometer *cordon sanitaire* around Sudanese oil fields.¹³ CNPC and GNPOC still maintain a close relationship with the Sudanese government, contracting with

nership, 23 J. DEVELOPING SOCIETIES 341, 352 (2007) (stating that Khartoum regime's tactics in war and its ties to terrorist groups persuaded Western oil companies to withdraw from Sudan); Goodman, *supra* note 8 (quoting Chen Fengyin, expert at China Contemporary International Relations Institute, as saying that Sudan is example of this strategy put into practice).

10. See Downs, *supra* note 9, at 58 (calling China's oil investments in Sudan its most successful to date); Goodman, *supra* note 8 (stating that Sudan is China's largest overseas oil project).

11. CNPC is a Chinese State-owned corporation. See COAL. INT'L JUSTICE, SOIL AND OIL: DIRTY BUSINESS IN SUDAN 19-20 (2006), available at <http://www.cij.org> (describing CNPC's introduction into Sudan and its path to becoming most influential oil company in Sudan); see also Gerald Butt, *Thirst for Crude Pulling China into Sudan*, DAILY STAR (Leb.), Aug. 17, 2004 (noting that CNPC is largest shareholder in Greater Nile Petroleum Operating Company ("GNPOC")); Goodman, *supra* note 8 (describing China's interests in GNPOC). Other members of the GNPOC consortium included Malaysia's Petronas (thirty percent share), Canada's Arakis (twenty-five percent share) and Sudan's Sudapet (five percent share). See COAL. INT'L JUSTICE, *supra*, at 20-21 (describing formation of GNPOC). For an extensive discussion of CNPC's history in Sudan, see L. Jakobson & Z. Daojiong, *China and the Worldwide Search for Oil Security*, 13 ASIA PAC. REV., No. 2 (2006), at 60, 66-68.

12. See BP STATISTICAL REVIEW OF WORLD ENERGY JUNE 2007 at 8 (2007), available at <http://bp.com/statisticalreview> (showing that between 1997 and 2006, Sudan's oil production rose from 9000 barrels per day to 397,000 barrels per day). For a more detailed account of GNPOC's efforts to establish Sudan's oil industry, see COAL. INT'L JUSTICE, *supra* note 11, at 20-22 (describing rise of GNPOC as Sudan's most influential oil company).

13. See U.N. Gen. Assembly, *Situation of Human Rights in the Sudan*, ¶ 77, U.N. Doc. A/54/467 (Oct. 14, 1999) (*prepared by* Leonardo Franco) (reporting that Sudanese government used bombers, helicopter gunships, tanks and artillery to clear 100 kilometer area around Heglig oil fields in May 1999); see also U.N. Econ. & Soc. Council [ECOSOC], Comm. on Human Rights, *Situation of Human Rights in the Sudan*, 4, U.N. Doc. E/CN.4/2002/46 (Jan. 23, 2002) (*prepared by* Gerhart Baum) (contending that "oil exploitation is closely linked to the conflict which . . . is mainly a war for the control of resources and, thus, power").

Khartoum to secure their oil operations¹⁴ and allowing Sudanese military forces to use the companies' air strips, landing pads, and mechanical support.¹⁵

As a result of its efforts to develop Sudan's oil industry, CNPC has become Sudan's largest foreign investor, with approximately US\$5 billion invested in oil field development¹⁶ and US\$7-8 billion in total assets in Sudan.¹⁷ Approximately seven to eight percent of China's oil is now drawn from Sudan, making the African nation China's fourth largest supplier of oil, and China is responsible for purchasing between sixty and eighty-five percent of Sudan's 500,000 barrel per day production.¹⁸ This

14. See Amnesty Int'l, *Sudan: The Human Price of Oil*, 12-13, AI Index AFR 54/01/00ERR, May 3, 2000 (noting that Sudanese government uses government-allied armed militias, such as Popular Defence Force, to provide foreign oil companies with protection); see also COAL. INT'L JUSTICE, *supra* note 11, at 22 (describing long-standing relationship between foreign oil companies and Sudanese military forces, including instances of Sudanese government soldiers securing oil operations); Goodman, *supra* note 8 (quoting Chinese foreign affairs official as saying that Chinese oil companies asked Sudanese government to "send troops" to areas where Chinese oil companies operate).

15. See CHRISTIAN AID, *THE SCORCHED EARTH: OIL AND WAR IN SUDAN 3* (2001), available at http://www.reliefweb.int/library/documents/2001/chr_aid-sud14mar1.pdf (finding that Sudanese government forces fighting in southern Sudan use oil company infrastructure, including air strips and oil roads, to carry out attacks on civilians); JOHN HARKER, *HUMAN SECURITY IN SUDAN: THE REPORT OF A CANADIAN ASSESSMENT MISSION* 16 (2000) (reporting that Sudanese military aircraft have used air strip at Heglig oil field); HUMAN RIGHTS WATCH, *SUDAN, OIL, AND HUMAN RIGHTS* 288-89 (2003) (quoting Canadian and British non-governmental investigation finding that Sudanese military forces conducted attacks on civilians from GNPOC oil facilities).

16. As a whole, China has invested at least US\$15 billion in Sudan since 1999. See F. William Engdahl, *Darfur: Forget Genocide, There's Oil*, ASIA TIMES ONLINE (Hong Kong), May 25, 2007, available at <http://www.globalpolicy.org/security/issues/sudan/2007/0525forget.htm> (highlighting scope of China's investment in Sudan's oil sector); Danna Harman, *In Sudan, China Focuses on Oil, Not Local Needs*, CHRISTIAN SCI. MONITOR, June 25, 2007, at 11 (describing Chinese investment in Paloich, Sudan, including 900-mile pipeline from oil fields to Port Sudan, tarmac road leading to Khartoum, and new airport with flights to Beijing).

17. See Downs, *supra* note 9, at 58 (reporting US\$7 billion estimate based on data from Wood Mackenzie, leading research and consulting service for global energy industry); Energy Information Administration, *China Energy Data, Statistics and Analysis*, <http://www.eia.doe.gov/cabs/China/Oil.html> (last visited Mar. 15, 2008) (estimating that CNPC has invested over US\$8 billion in Sudan's oil sector).

18. See David Blair, *Oil-Hungry China Takes Sudan Under Its Wing*, DAILY TELEGRAPH (London), Apr. 23, 2005, at 16 (estimating that Sudan provides approximately seven percent of China's oil imports); Engdahl, *supra* note 16 (describing extent of China's oil interests in Sudan); Harman, *supra* note 16 (stating that Sudan sells vast majority of its oil to China); see also Kristina Nwazota, *China-Sudan Trade Relations Complicate Darfur Crisis*, ONLINE NEWSHOUR, Apr. 25, 2006, <http://www.pbs.org/newshour/updates/>

economic relationship runs even deeper than oil, however. China purchases seventy-one percent of Sudan's global exports¹⁹ and is a source of significant economic aid. In February 2007, China promised to cancel US\$80 million in Sudanese public debt and provide another US\$120 million in grants and loans for a new presidential palace and various infrastructure projects.²⁰ This substantially exceeded China's pledge of US\$5.2 million in humanitarian aid to ease the suffering in Darfur.²¹

The arms trade is an even more controversial realm of cooperation between the governments of China and Sudan. Sudan's newly developed oil exporting business provides it with the necessary cash flow to purchase arms, many from China itself, that it uses to protect Chinese oil interests and supply the militia groups responsible for human rights atrocities in Darfur.²² For example, in the spring of 2002, the Sudanese military used Chi-

china-darfur_04-25-06.html (estimating that China buys seventy percent of Sudan's oil). For a more extensive discussion of China's energy profile, see DANIEL H. ROSEN & TREVOR HOUSER, *CHINA ENERGY: A GUIDE FOR THE PERPLEXED* (2007), available at <http://www.iie.com/publications/papers/rosen0507.pdf>.

19. See Save Darfur Coal., *supra* note 5 (describing China as Sudan's largest trading partner); see also *Arms, Oil, and Darfur: The Evolution of Relations Between China and Sudan*, SMALL ARMS SURVEY, July 2007, at 6-7 [hereinafter *Arms, Oil, and Darfur*] (citing Chinese Ministry of Commerce report that bilateral trade between China and Sudan increased from US\$2.56 billion in 2004 to US\$3.91 billion in 2005).

20. See *Chinese President Tells Sudan Counterpart to Give U.N. Bigger Role in Resolving Darfur Conflict*, INT'L HERALD TRIB., Feb. 2, 2007, available at <http://www.iht.com/articles/ap/2007/02/03/africa/AF-GEN-Sudan-China.php> (reporting that at February meeting with Sudanese President al-Bashir, Chinese President Hu reduced import tariffs on Sudanese goods, granted loan of US\$77.4 million, gave grant of US\$40 million, and canceled debts of US\$60.7 million and US\$19 million); see also Save Darfur Coal., *supra* note 5 (describing China's significant economic aid to Sudan).

21. See Save Darfur Coal., *supra* note 5 (reporting China's recent pledge of humanitarian assistance to Darfur); see also *Arms, Oil, and Darfur*, *supra* note 19, at 7-8 (recognizing China's "modest" contribution of US\$3.5 million to African Union Mission in Sudan ("AMIS") while U.N. officials estimate annual budget of new hybrid force at around US\$2 billion).

22. See Amnesty Int'l, *People's Republic of China, Sustaining Conflict and Human Rights Abuses: The Flow of Arms Accelerates*, AI Index ASA 17/030/2006, June 11, 2006, at 7 (noting that Sudanese government used increases in oil revenues to fund its military activities in Darfur); Goodman, *supra* note 8 (reporting that oil revenues allowed Sudan to double its military budget); see also COAL. INT'L JUSTICE, *supra* note 11, at 24 (pointing out that oil revenues provide Sudan with funds it needs to purchase weapons to protect oil interests). Since the 1990's, China has reportedly sold over US\$100 million in fighter aircraft and troop transport helicopters to Sudan, and helped establish three weapons manufacturing facilities in Sudan, including one that assembles T-55 tanks. See Save Darfur Coal., *supra* note 5 (summarizing China's extensive military cooperation with Sudan).

nese-made helicopters and weapons to conduct an offensive against the Nuer tribe of Leal to clear the way for GNPOC's oil exploration.²³ International human rights groups have documented the ways in which the Sudanese government funnels oil revenues into arms purchases.²⁴ Abda Yahia El-Mahdi, a former finance minister of Sudan, claims that seventy percent of oil profits go towards arms purchases.²⁵ With approximately seventy percent of Sudan's US\$5.26 billion in total global exports attributed to oil,²⁶ the revenues earned through oil sales enable the Sudanese government to spend liberally on weapons and other military supplies.²⁷

A significant portion of these purchases find their way to government-allied militia groups known as "Janjaweed,"²⁸ the

23. See Goodman, *supra* note 8 (noting that Nuer people lived in center of contested oil field and China helped Sudan set up three weapons factories near Khartoum); see also COAL. INT'L JUSTICE, *supra* note 11, at 24 (describing Sudanese military's efforts to expel local inhabitants from oil-producing areas); U.S. AGENCY FOR INT'L DEV. [USAID], UPPER NILE TRIP REPORT (2002), available at http://www.usaid.gov/locations/sub-saharan_africa/sudan/upper_nile_report.html (reporting on movement of internally displaced persons ("IDPs") as result of military attacks to secure oil fields in Leal region of Sudan).

24. See GEORGETTE GAGNON & JOHN RYLE, REPORT OF AN INVESTIGATION INTO OIL DEVELOPMENT, CONFLICT AND DISPLACEMENT IN WESTERN UPPER NILE, SUDAN 35-36 (2001) (recognizing that military expenditures rose as government revenue from oil increased, including fifty percent rise in defense spending between 1999 and 2001); see also COAL. INT'L JUSTICE, *supra* note 11, at 22-25 (providing detailed analysis of close relationship between Chinese oil companies and Sudanese military forces).

25. See Jeffrey Gettleman, *Far Away from Darfur's Agony, Khartoum is Booming*, INT'L HERALD TRIB., Oct. 24, 2006, at 1 (explaining that weapons and ammunition remain governmental priority in case U.N. imposes blanket arms embargo). Lam Akol, Sudan's former transportation minister from 1998 to 2002, says that when Sudan began collecting about US\$500 million in revenue from oil production in 1999, approximately eighty percent went to buy weapons. See Goodman, *supra* note 8.

26. See GAGNON & RYLE, *supra* note 24, at 35 (noting that Sudanese oil revenues increased by 875.7% between 1999 and 2001, from US\$61 million to US\$596 million); Save Darfur Coal., *supra* note 5 (describing crucial role oil plays in Sudanese economy).

27. See SAVE DARFUR COAL., CHINA IN SUDAN: HAVING IT BOTH WAYS 3 (2007), available at http://darfur.3cdn.net/2573d6e338d592b4a0_csm6beuk7.pdf (explaining how China's investment in Sudan perpetuates current conflict in Darfur). Trade data for 2005 indicates that Sudan imported US\$24 million worth of arms and ammunition, US\$57 million of parts and aircraft equipment, and US\$2 million worth of helicopter and airplane parts from China. See Amnesty Int'l, *supra* note 3, at 7 (citing U.N. Commodity Trade Statistics Database ("COMTRADE") trade data for 2005).

28. Janjaweed forces reportedly carry new weapons and communications equipment such as satellite phones, often travel in Sudanese government vehicles, receive monthly stipends that exceed the salary of army soldiers, and carry government-issued identity cards. See HUMAN RIGHTS WATCH, DARFUR IN FLAMES: ATROCITIES IN WESTERN SUDAN 22-24 (2004) (providing extensive description of Sudanese government links to

forces primarily responsible for crimes against humanity in Darfur.²⁹ Nevertheless, a recent study shows that China became Sudan's largest supplier of weapons just before the onset of the Darfur conflict, and has remained so ever since.³⁰ In fact, the Chinese Defense Minister recently stated that military relations with Sudan were "developing smoothly" and that China is "willing to further develop military co-operation between our two countries in all areas."³¹ This comes despite credible reports that Sudanese government forces continue to smuggle arms, ammunition, and related materials into the Darfur region in flagrant violation of the U.N. arms embargo,³² where they continue

Janjaweed militias, which it uses as a counterinsurgency proxy to attack civilians while hiding government involvement). The Janjaweed militias primarily consist of a large number of nomadic camel and cattle-herders who have historically been involved in intermittent conflict with sedentary agriculturalists due to increasing desertification and competition for land and water. Undoubtedly, their willing participation in the conflict is to some degree linked to their interest in acquiring land and livestock formerly held by the sedentary populations of Darfur. See HUMAN RIGHTS WATCH, *DARFUR DESTROYED: ETHNIC CLEANSING BY GOVERNMENT AND MILITIA FORCES IN WESTERN SUDAN* 1 (2004) [hereinafter *DARFUR DESTROYED*] (describing long-standing rivalry between rebel groups Sudan Liberation Army/Movement ("SLA/M"), Justice and Equality Movement ("JEM") and Arab pastoralists with nomadic tradition of armed militias). See generally *DARFUR DESTROYED*, *supra* (noting dozens of incidents where Janjaweed invaded villages and stole cattle, horses, goats, sheep, and donkeys).

29. See HUMAN RIGHTS WATCH, *DARFUR DOCUMENTS CONFIRM GOVERNMENT POLICY OF MILITIA SUPPORT* 4-8 (2004), available at <http://hrw.org/backgrounder/africa/072004darfur.pdf> (citing Sudanese government documents illustrating its involvement in recruiting and arming militias and authorizing activities resulting in crimes against humanity in Darfur); see also Gettleman, *supra* note 3 (describing Janjaweed involvement in attack on unarmed civilians in Darfur village of Muhagiriya on October 8, 2007).

30. See *Arms, Oil, and Darfur*, *supra* note 19, at 5 (providing statistics and charts showing that China sold almost US\$25 million in weapons to Sudan in 2005 alone, far more than any other supplier). Sudan is not purchasing arms only from the Chinese, however. For example, Sudan purchased MiG-29S combat aircraft and military helicopters from Russia in 2004 and 2005, and still maintains a significant arms trade with Iran. See DAMIEN FRUCHART, PAUL HOLTOM & SIEMON T. WEZEMAN, STOCKHOLM INT'L PEACE RESEARCH INST., UNITED NATIONS ARMS EMBARGOES: THEIR IMPACT ON ARMS FLOWS AND TARGET BEHAVIOUR 16 (2007) (discussing inability of U.N. arms embargo to reign in Sudanese arms purchases); *Arms, Oil, and Darfur*, *supra* note 19, at 5 (indicating that Iran was second largest exporter of arms to Sudan over period between 1992 and 2005).

31. See Mure Dickie & Mark Turner, *China to Expand Military Ties with Sudan*, FIN. TIMES (London), Apr. 4, 2007, at 6 (quoting Chinese defense minister Cao Gangchuan); see also Amnesty Int'l, *supra* note 3, at 7 (detailing increasing number of arms transfers between China and Sudan).

32. See, e.g., Amnesty Int'l, *supra* note 3, at 11-24 (describing continued flow of illicit arms into Darfur, in violation of U.N. sanctions); U.N. Human Rights Council

to fuel serious human rights violations.³³ Due to this ongoing conflict, humanitarian aid is unable to reach those who need it and even international peacekeeping forces are coming under attack from both rebel groups and Sudanese government forces.³⁴

B. *China's Actions in the U.N. Security Council*

Between 2004 and 2006, as the U.N. Security Council paid increasing attention to the situation in Darfur, China came under heavy criticism for interfering in efforts to take decisive action to stop these massive crimes against humanity. China consistently threatened to veto any resolution calling for sanctions or other serious measures against the government of Sudan.³⁵ International human rights organizations and Western media alleged that China's oil interests were essentially preventing the Security Council from taking any meaningful action to end human rights violations in Darfur.³⁶ In response to these

[HRC], *Report of the High-Level Mission on the Situation of Human Rights in Darfur Pursuant to Human Rights Council Decision S-4/101*, ¶¶ 38-57, U.N. Doc. A/HRC/4/80 (Mar. 9, 2007) [hereinafter *HRC Report*] (reporting that arms continue to flow freely and heavily armed militia continue to operate across Darfur); see also S.C. Res. 1556, *supra* note 2 (imposing arms embargo on all non-governmental combatants in Darfur); S.C. Res. 1591, *supra* note 2 (strengthening arms embargo to cover all parties to conflict in Darfur).

33. See Amnesty Int'l, *supra* note 3, at 11-24 (connecting smuggled arms to serious human rights abuses in Darfur); Gettleman, *supra* note 3 (reporting October 8, 2007 attack on unarmed civilians in Darfur).

34. According to Human Rights Watch, the Sudanese government uses a multitude of official restrictions, harassment, and intimidation against international relief agencies seeking to bring humanitarian aid to Darfur. See HUMAN RIGHTS WATCH, *DARFUR: HUMANITARIAN AID UNDER SIEGE* 11-25 (2006) (detailing efforts of Sudanese government to obstruct humanitarian workers' access to Darfur and rebel attacks on humanitarian agencies and workers); see also Nicholas D. Kristof, Op-Ed., *China's Genocide Olympics*, N.Y. TIMES, Jan. 24, 2008, at A23 (noting that on Jan. 7, 2008, Sudanese military ambushed clearly marked U.N. convoy of peacekeepers in Darfur, later claiming that attack was mistake); Lydia Polgreen, *Peacekeepers as Targets: Darfur Attack Imperils Talks*, N.Y. TIMES, Oct. 2, 2007, at A3 (discussing Darfur rebel attack on peacekeepers in Haskanita, killing ten peacekeepers from three African countries).

35. See Nwazota, *supra* note 18 (describing China's reluctance to support Security Council resolutions taking action against Sudanese government); Goodenough, *supra* note 4 (noting that Chinese pressure repeatedly forced United States to water-down strongly-worded resolutions).

36. See Downs, *supra* note 9, at 58 (acknowledging CNPC's substantial investment in Sudanese oil industry as a factor in Beijing's reluctance to support action against Sudan); He Wenping, *The Balancing Act of China's Africa Policy*, CHINA SECURITY J., Summer 2007, at 23, 34 (noting accusations of Western media that China ignores, or even

accusations, China cited its long-standing policy of non-interference in the internal affairs of other nations to justify its position.³⁷ Exemplifying this attitude, China's deputy minister of foreign affairs stated in 2004 that "[b]usiness is business. We try to separate business from politics. . . . I think the internal situation in Sudan is an internal affair, and we are not in a position to impose on them."³⁸

As resolutions on Darfur have come before the Security Council, China has used its status as a permanent member to weaken the resolutions rather than veto them entirely.³⁹ This is consistent with China's general policy of abstaining or refusing to participate in certain votes, allowing China to send a message while avoiding the alienation of allies.⁴⁰ Traditionally, China ab-

exacerbates, deteriorating human rights situation in Darfur); Goodenough, *supra* note 4 (reporting on human rights groups' and international policy analysts' criticisms of China's response to Darfur crisis); Nwazota, *supra* note 18 (citing China's significant business interests in Sudan, its increasing thirst for oil, and its longstanding policy of non-interference as reasons for China's unwillingness to support international action on Darfur).

37. See Downs, *supra* note 9, at 59 (describing China's reluctance to pressure Sudanese government due to its policy of non-interference); see also Yitzhak Shichor, *China's Voting Behavior in the U.N. Security Council*, CHINA BRIEF, Sept. 6, 2006, available at http://www.jamestown.org/images/pdf/cb_006_018.pdf (providing background on China's historical policy of non-interference).

38. See Downs, *supra* note 9, at 59 (quoting Zhou Wenzhong, former Chinese deputy minister of foreign affairs); Howard French, *China in Africa: All Trade, With No Political Baggage*, N.Y. TIMES, Aug. 8, 2004, at 4 (discussing shift in China's Africa policy from counter-balancing Western power to pure big business). This policy of non-interference stems in part from China's unwillingness to involve the international community in its own internal situations. See Shichor, *supra* note 37 (noting China's belief that Darfur is internal affair that government of Sudan, along with regional organizations such as A.U., are responsible for solving); Nwazota, *supra* note 18 (acknowledging that China does not want to support U.N. sanctions on any country for human rights violations because China itself is vulnerable).

39. See Shichor, *supra* note 37 (taking note of China's abstentions on Security Council resolutions 1556, 1564, 1591, 1593, and 1672); Opheera McDoom, *China's Interests in Sudan Bring Diplomatic Cover*, REUTERS, Dec. 17, 2005 (reporting that China abstained from voting on every Security Council resolution critical of Sudanese government).

40. In fact, despite frequent threats, China has used its power as a permanent member of the Security Council to strike down only three resolutions. The first came on August 25, 1972, in opposition to Draft Resolution S/10771, which would have admitted Bangladesh as a member of the U.N. The second was on January 10, 1997, in relation to Draft Resolution S/1997/18 authorizing 155 observers to verify the agreement on the definite ceasefire in Guatemala. The most recent was on February 25, 1999, relating to Draft Resolution S/1999/201, which concerned the extension of the U.N. Preventive Deployment Force ("UNPREDEP") in the former Yugoslav Republic of Macedonia. See Zhiyuan Cui, *The Bush Doctrine and Neoconservatism: A Chinese Perspective*,

stains in votes on draft resolutions that it perceives as interfering in a nation's domestic affairs or undermining State sovereignty.⁴¹ The Chinese government prefers that parties involved in internal conflicts settle matters on their own, without external intervention.⁴² China favors this approach in handling its own affairs, such as the situation in Tibet, and does not wish to create precedent for the U.N. to interfere in analogous situations.⁴³

C. China's Changing Attitude Towards Sudan

In March 2007, the U.N. released the report of the High-Level Mission on the Situation of Human Rights in Darfur (the "Mission").⁴⁴ Its account of continued violence and suffering in Darfur strengthened calls for international intervention in Su-

46 HARV. INT'L L.J. 403, 406 (2005) (observing that China cast negative votes in Security Council total of five times, mostly in relation to Taiwan); Global Policy Forum: Subjects of U.N. Security Council Vetoes, <http://www.globalpolicy.org/security/membership/veto/vetosubj.htm> [hereinafter Subjects of U.N. Security Council Vetoes] (last visited Mar. 15, 2008) (noting that two of China's five negative votes in Security Council were in combination with negative vote from Russia, thus not "true" vetoes). By way of comparison, since December 1971 (after the U.N. admitted China) the United States has cast its veto seventy-six times, the United Kingdom twenty-four times, France fourteen times, and Russia/the Soviet Union thirteen times. See Cui, *supra*, at 406 (highlighting China's relatively rare use of its veto power as permanent member of U.N. Security Council); Shichor, *supra* note 37 (providing historical background on China's voting behavior in Security Council); Subjects of U.N. Security Council Vetoes, *supra*, (listing negative votes within U.N. Security Council by date, Member State, and subject of veto).

41. See Shichor, *supra* note 37 (recognizing that China is reluctant to use its veto power, opting instead for abstention and non-participation); see also Michael C. Davis, *International Intervention in an Age of Crisis and Terror: U.N. Reform and Regional Practice*, 15 TUL. J. INT'L & COMP. L. 1, 22-27 (2006) (describing China's general policy of non-interference and its aggressive defense of robust notion of sovereignty).

42. See Shichor, *supra* note 37 (noting that Beijing is especially sensitive to issue of sanctions and use of force under U.N. auspices, particularly when its interests are at stake). But see Davis, *supra* note 41, at 23 (recognizing that China eased its resistance to multilateralism over past decade by signing human rights treaties and increasingly participating in international dialogue).

43. See Nick Grono, *Briefing—Darfur: The International Community's Failure to Protect*, 105 AFRICAN AFFAIRS 621, 628 (2006) (stating that China is leery of U.N. intervention in civil conflicts due to fears it may lead to intervention in Tibet or Xinjiang). For an extensive discussion of the situation in Tibet, see, for example, ELLIOT SPERLING, *THE TIBET-CHINA CONFLICT: HISTORY AND POLEMICS* (2004), available at <http://www.eastwestcenter.org/fileadmin/stored/pdfs/PS007.pdf> (providing in-depth analysis of historical arguments of primary parties to Tibet-China conflict).

44. The High-Level Mission's mandate was "to assess the human rights situation in Darfur and the needs of the Sudan in this regard . . . [and to] report to the Council at its fourth session [to be held from 12 March to 5 April 2007]." Human Rights Council Decision S-4/101, ¶¶ 4, 6, (Dec. 13, 2006); see also HRC Report, *supra* note 32, ¶ 1.

dan.⁴⁵ In the report, Sudanese witnesses and victims described large-scale attacks on civilian communities by Sudanese armed forces and government-supported militia, widespread rape and sexual violence against women, and further instances of torture, and cruel, inhuman, and degrading treatment by national security and military intelligence personnel.⁴⁶ According to the report, the humanitarian situation in Sudan deteriorated to a level worse than in 2004, as Sudanese government forces and armed militia consistently attacked relief workers and blocked access to humanitarian support.⁴⁷ The Mission concluded that although the U.N. attempted to take action in Darfur, its efforts were inadequate and ineffective due to resistance and obstruction by Sudanese forces.⁴⁸ A key recommendation of the report was for the international community to adopt a fully unified approach and take urgent action to protect the civilians of Darfur.⁴⁹

Such disturbing reports out of Sudan invited increased attention on China's role in the region.⁵⁰ Western nations per-

45. See The Secretary-General, *Monthly report of the Secretary-General on Darfur*, ¶¶ 1-13, U.N. Doc. S/2007/104 (Feb. 23, 2007) (observing increased violence from November 2006 to January 2007 in Darfur, as Sudanese government forces, supported by armed militia, attacked rebel forces and unarmed civilians, in contravention of ceasefire agreements and international law); see also Gettleman, *supra* note 3 (describing Janjaweed involvement in attack on unarmed civilians in Darfur village of Muhagiriya on October 8, 2007).

46. See HRC Report, *supra* note 32, ¶¶ 38-43, 76 (reporting that tactics Sudanese government and Janjaweed forces used in attacks show failure to respect principles of distinction and proportionality and represent grave violations of international human rights and humanitarian law).

47. See *id.* ¶¶ 44-45 (noting that Sudanese government and Janjaweed forces killed more relief workers in latter half of 2006 than in previous two years combined).

48. See *id.* ¶ 76 (concluding that government of Sudan participated in and failed to protect population of Darfur from large-scale international crimes).

49. See *id.* ¶¶ 77(i), 77(l) (recommending that international community adopt fully unified approach in addressing situation in Darfur through deployment of A.U./U.N. peacekeeping/protection force and full cooperation with International Criminal Court).

50. See, e.g., JOHN GHAZVINIAN, UNTAPPED: THE SCRAMBLE FOR AFRICA'S OIL 287-88 (2007) (noting increasing U.S. frustration with China's willingness to do business in countries United States is trying to pressure or isolate, such as Sudan, Equatorial Guinea, and Zimbabwe); SAVE DARFUR COAL., *supra* note 27, at 1 (calling China's influence over Khartoum "critical" to prospects for peaceful resolution in Darfur); *Arms Continue to Flow Into Darfur, Security Council Expert Panel Finds*, U.N. NEWS, October 10, 2007, <http://www.un.org/apps/news/story.asp?NewsID=24261&Cr=sudan&Cr1> (reporting on findings of U.N. panel that Sudanese government continues to violate Security Council arms embargo by shipping weapons into Darfur); Alexander G. Higgins, *U.N. Panel Calls for Action in Darfur*, WASHINGTONPOST.COM, Mar. 12, 2007 available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/03/12/AR2007031200177.html>

ceived China as shielding the Sudanese government from international pressure in the Security Council, supplying Sudan with tens of millions of dollars in oil revenues, and selling weapons to the Sudanese government that it used to perpetuate violence against rebels and unarmed civilians in Darfur.⁵¹ This perception led to increased pressure on China to support peace efforts. Recently, influential human rights groups and non-governmental organizations have called for the 2008 Beijing Olympics to be labeled the "Genocide Olympics" in response to China's position on intervention in Sudan.⁵² Furthermore, an increasing number of leaders in Sub-Saharan Africa are finding the Sudanese government's actions in Darfur reprehensible on human rights, religious, and racial grounds.⁵³

In the face of this criticism, China seems to have realized that it will not be able to deter the international community from placing increased pressure on Sudan.⁵⁴ Thus, Beijing has assumed a more active role in solving the crisis in Darfur in an

(reporting that in March 2007, U.N. team criticized international community for failing to halt atrocities in Darfur).

51. See generally HUMAN RIGHTS WATCH, *supra* note 15 (providing in-depth report of ongoing relationship between oil production in Sudan, purchase of weapons by Sudanese government, and ongoing human rights violations in Darfur); Goodman, *supra* note 8 (describing China's continued sale of arms to Sudan despite knowledge of massive human rights violations occurring in Darfur).

52. See Helene Cooper, *A Diplomatic Victory for Hollywood*, INT'L HERALD TRIB., Apr. 14, 2007, at 1 (crediting actress Mia Farrow and film director Steven Spielberg, who recently resigned as artistic advisor to China for Beijing Olympics, with convincing China to send senior official Zhai Jun to Sudan to put pressure on Khartoum regime); Helene Cooper, *Spielberg Drops Out as Adviser to Beijing Olympics in Dispute Over Darfur Conflict*, N.Y. TIMES, Feb. 13, 2008, at 12 (reporting in February of 2008 that director Steven Spielberg resigned as artistic adviser to Beijing Olympics to protest China's ongoing economic, military, and diplomatic ties to Sudan in face of grave human rights violations); Editorial, *China and Darfur – The Genocide Olympics?*, WASH. POST, Dec. 14, 2006, at A30 (suggesting that China's stance on Darfur could lead to calls for nations to boycott Beijing Olympics); see also Whelan, *supra* note 4 (reporting that attempts to link crisis in Sudan with calls for boycott of Beijing Olympics have upset Chinese).

53. See Bates Gill, Chin-hao Huang & J. Stephen Morrison, *Assessing China's Growing Influence in Africa*, CHINA SECURITY J., Summer 2007, at 3, 13 (noting China's susceptibility to claims that it is impeding A.U. efforts to secure peace in Darfur); Wenping, *supra* note 36, at 34 (discussing African leaders' recent realization that because conflict in one area of Africa can affect neighboring countries, all countries must take collective responsibility to ensure strong and stable Africa).

54. See Downs, *supra* note 9, at 58 (noting that the argument that China's oil interests are prompting Beijing to willfully ignore Darfur crisis is becoming outdated); Amjad Atallah & Isaac Shapiro, *Obstacles in Khartoum*, WASH. TIMES, Nov. 23, 2007, at A23 (acknowledging that activists pushed China towards taking action to address situation in Darfur).

effort to establish itself internationally as a “responsible stakeholder” in Africa, and to secure its reputation and investments throughout the continent.⁵⁵

In February 2007, while meeting in Khartoum with Sudanese President Omar al-Bashir, Chinese President Hu Jintao stated that it is imperative to improve the situation in Darfur and living conditions of local people.⁵⁶ The rarity of Hu’s public remarks and convenient timing of this statement indicates that the Chinese are beginning to support the notion that governments have a responsibility to protect their citizens from harm.⁵⁷ One month later, China’s National Development and Reform Commission, in conjunction with the Ministry of Foreign Affairs and Ministry of Commerce, released a statement announcing that China was removing Sudan from its latest list of countries that enjoy preferred trade status.⁵⁸ According to that statement, Beijing would no longer provide financial incentives to Chinese companies that invest in Sudan.⁵⁹ China continued its efforts to improve the situation in Darfur by sending Ambassador Liu

55. See Downs, *supra* note 9, at 58 (stating that Beijing’s involvement in U.N. actions enables it to protect its economic interests and redeem its international reputation); Gill, Huang & Morrison, *supra* note 53, at 13 (reporting on recent Chinese actions to exert pressure on Khartoum, including high-level diplomatic pressure); Good-enough, *supra* note 4 (noting efforts of U.S. Deputy Secretary of State to urge China to become “responsible stakeholder” in international system). See generally Konings, *supra* note 9 (discussing China’s growing engagement with Africa).

56. See *China’s Hu Puts Forward Four-Point Principle on Darfur Solution*, BBC WORLDWIDE MONITORING, Feb. 2, 2007 (reporting on Chinese President Hu Jintao’s visit with Sudanese President Omar al-Bashir in Khartoum); *Hu Puts Forward Principle on Darfur Issue*, XINHUA NEWS AGENCY (Beijing), Feb. 5, 2007, available at http://www.chinadaily.com.cn/world/2007-02/05/content_801432.htm (discussing Chinese President Hu Jintao’s four-point plan for pursuing solution to Darfur issue).

57. See Gill, Huang & Morrison, *supra* note 53, at 14 (noting that President Hu’s statement is “about as close as a Chinese leader has come” to supporting notion of government responsibility for protecting its citizens from harm); see also *Arms, Oil, and Darfur*, *supra* note 19, at 9 (commenting that President Hu’s visit to Sudan showcased China’s public commitment to resolution of conflict in Darfur).

58. See Richard McGregor, *Iran, Sudan, and Nigeria Off China Incentive List*, FIN. TIMES (London), Mar. 2, 2007, at 6 (reporting that China left Iran, Sudan, and Nigeria off list of countries it provides financial incentives to invest in); see also Gill, Huang & Morrison, *supra* note 53, at 14 (discussing recent Chinese actions showing increased frustration with Sudan’s handling of situation in Darfur).

59. See McGregor, *supra* note 58 (noting that previous incentives included tax breaks and soft loans from China’s large state-owned development banks); see also Gill, Huang & Morrison, *supra* note 53, at 14 (observing that this move shows Beijing’s disaffection with Sudanese President al-Bashir’s unwillingness to allow joint A.U./U.N. peacekeeping force).

Guijin, China's first special representative for African affairs, to Sudan to meet with officials of the Sudanese government. Liu reportedly expressed China's hope that Sudan would show greater flexibility in its approach to Darfur by accepting a proposed African Union ("A.U.)/U.N. hybrid peacekeeping force.⁶⁰ This effort seems to have paid off. On August 1, 2007, Sudan formally expressed its acceptance of the U.N. resolution approving the joint force,⁶¹ a potentially critical step in securing peace in the Darfur region.⁶²

China still maintains its economic engagement with Sudan, despite the widely held belief that cutting off the Sudanese government's access to funds could force it to re-evaluate its stance on Darfur.⁶³ On the other hand, Chinese foreign policy experts maintain that Beijing's economic relationship with Khartoum gives it valuable leverage within Sudan that other members of the international community do not possess.⁶⁴ While this lever-

60. See Alec Russell & William Wallis, *Beijing Puts Quiet Pressure on Sudan*, FIN. TIMES (London), June 19, 2007, at 6 (quoting senior Chinese diplomat Liu Guijin: "In our own way and through various means and various channels we have tried to advise the Sudanese government to be more flexible."); see also Gill, Huang & Morrison, *supra* note 53, at 15 (highlighting Liu's statements that Beijing used "very direct language" to persuade Sudan to accept A.U./U.N. joint peacekeeping force); *China Contributes to Push for Peace in Sudan's Darfur*, XINHUA NEWS AGENCY (Beijing), Nov. 6, 2007 (citing Chinese ambassador Li Chengwen's statement that China has been actively involved in development and construction in Darfur region to help promote settlement of Darfur issue).

61. S.C. Res. 1769, *supra* note 2 (creating UNAMID, hybrid A.U./U.N. peacekeeping mission to Darfur); see John Sullivan, *U.N. Security Council Approves Joint Force of up to 26,000 Peacekeepers for Darfur*, N.Y. TIMES, Aug. 1, 2007, at A8 (discussing unanimous Security Council vote to authorize deployment of 26,000 peacekeepers, world's largest peacekeeping operation).

62. See Lydia Polgreen & Warren Hoge, *Sudan Relents on Peacekeepers in Darfur*, N.Y. TIMES, June 13, 2007, at A3 (reporting that spokesman for A.U. called Sudanese acceptance of resolution "a breakthrough moment"). But see Arms, Oil, and Darfur, *supra* note 19, at 9 (acknowledging watering down of resolution 1769 through removal of language threatening sanctions on Sudan); Polgreen & Hoge, *supra* (stating that Sudan has made similar pledges only to reverse itself).

63. See Arms, Oil, and Darfur, *supra* note 19, at 9 (noting that China's official policy continues to be protection of Sudanese sovereignty); Downs, *supra* note 9, at 61 (citing reports of international observers that without China's support Sudan would need to take different approach to Darfur).

64. See Downs, *supra* note 9, at 61 (explaining idea that international community needs China to assume role of "good cop" to make progress in negotiations with Sudan); *Ambassador of China: Distinguished Relations Between Sudan and China Will Push Ahead Peaceful Solution Efforts*, SUDAN NEWS AGENCY, Nov. 6, 2007 (citing Ambassador of China to Sudan's comments that relations between Sudan and China will encourage peaceful political solution for Darfur); Geoff Dyer & William Wallis, *Beijing Promotes*

age may be valuable in efforts to secure Sudan's compliance with certain international initiatives, such as the proposed A.U./U.N. peacekeeping force,⁶⁵ China's close association with Khartoum also complicates efforts to achieve a lasting peace between the disputing factions in Sudan. China's presence on the front lines of international peacekeeping efforts alienates those factions opposed to the Sudanese government, including the civilians of Darfur.⁶⁶ In fact, Darfuri rebels belonging to the Justice and Equality Movement ("JEM") recently said they would welcome peacekeepers from any country other than China.⁶⁷ Due to China's longstanding cooperation with the Khartoum regime, rebel groups do not view China as an impartial third party capable of mediating peace within Sudan, or even participating in peacekeeping efforts.⁶⁸ To lay the groundwork for fundamental change in Sudan, including ending crimes against humanity in Darfur and providing humanitarian assistance to hundreds of thousands of displaced civilians, it is essential that the international community confront the situation as a united front.⁶⁹

Africa Ties Ahead of Talks, FIN. TIMES (London), May 16, 2007, at 7 (quoting China Eximbank President Li Ruogu: "In the long run, Chinese aid and investment will help the resolution of the Darfur problem.").

65. See Gill, Huang & Morrison, *supra* note 53, at 15 (recognizing China's efforts to persuade Sudan to accept A.U./U.N. joint peacekeeping force); Sullivan, *supra* note 61 (discussing Security Council vote to authorize deployment of U.N. peacekeepers).

66. See *Chinese Unit Must Leave, Rebels Say*, L.A. TIMES, Nov. 25, 2007, at A4 (discussing rebel group JEM's demand that Chinese peacekeepers leave Darfur); *Darfur Rebels Spurn Chinese Force*, BBC NEWS, Nov. 24, 2007, <http://news.bbc.co.uk/2/hi/africa/7111206.stm> (noting that Sudanese rebel forces refuse to allow Chinese into areas they control).

67. See Sara Hassan, *Chinese Peacekeepers Arrive in Darfur*, GLOBAL INSIGHT, Nov. 26, 2007 (noting difficulties Chinese peacekeepers will have in performing their duties in Darfur); *Darfur Rebels Spurn Chinese Force*, *supra* note 66 (reporting that Sudanese President Omar Al-Bashir said Sudan would only accept non-African troops from Pakistan and China).

68. See *China Denounced in Darfur*, CALGARY SUN, Nov. 25, 2007, at 11 (acknowledging rebel demands that China pull its peacekeepers out of Darfur); *Darfur Rebels Spurn Chinese Force*, *supra* note 66 (quoting JEM rebel leader Khalid Ibrahim: "We oppose them coming because China is not interested in human rights. It is just interested in Sudan's resources.").

69. See, e.g., Grono, *supra* note 43, at 626 (claiming that only U.N. action can ensure coordinated, properly resourced, legitimate international response to conflict in Darfur); Maggie Farley, *World Court Seeks U.N. Pressure on Sudan*, L.A. TIMES, June 8, 2007, at A12 (quoting U.S. ambassador to U.N. Zalmay Khalilzad on U.S. intention to push for more multilateral sanctions if Sudanese do not cooperate in peace process); Gettleman, *supra* note 25 (commenting that as long as Asian countries are eager to trade with Sudan, unilateral U.S. sanctions will have minimal effect); Mathieu von

II. INTERNATIONAL ACTION IN SUDAN: THE OIL-FOR-FOOD PROPOSAL

In response to the current state of affairs in Sudan, Justice Richard Goldstone proposed that the U.N. set up a sanctions regime that would allow Sudan to sell oil only on the condition that proceeds fund a U.N. escrow account dedicated to improving the humanitarian situation in Sudan.⁷⁰ Although a similar U.N. program in Iraq fell victim to corruption and maladministration, Justice Goldstone contends that the U.N. can avoid repeating those problems by improving the administration of the program.⁷¹ This Part first examines the failings of the U.N. Oil-for-Food Program in Iraq and then analyzes suggestions for avoiding such problems in a similar future initiative.

A. The U.N. Oil-for-Food Program in Iraq

The U.N. Oil-for-Food Program in Iraq started out in 1996 as a creative, well-intentioned effort to impose strong sanctions on a brutal regime while maintaining minimum standards of health and nutrition for the Iraqi people.⁷² Operating for seven years and handling approximately US\$110 billion in sales of Iraqi oil and US\$39 billion in purchases of humanitarian goods, it was the largest, most ambitious humanitarian program that the U.N. has ever undertaken.⁷³ Although the Program was undoubtedly successful in improving the living conditions of many

Rohr, *Ending "The World's Hottest War"*, SALON, June 13, 2007, <http://www.salon.com/news/feature/2007/06/13/darfur/> (citing expert on Africa John Prendergast's suggestion that countries join United States in applying economic sanctions on Sudan).

70. Goldstone, *supra* note 7 (advocating for establishment of oil-for-food program in Sudan).

71. *See id.* (proposing that U.N. learn from weaknesses of Oil-for-Food Program in Iraq to build stronger program in Sudan, pressuring Khartoum to stop killings in Darfur).

72. *See* Barbara Crossette, *Iraq Gets U.N. Approval to Sell Oil to Meet Civilian Needs*, N.Y. TIMES, Dec. 10, 1996, at A14 (reporting on institution of Oil-for-Food Program in Iraq to raise money for food, medicine, and other urgent civilian needs); John M. Goshko, *Iraq Accepts U.N. Terms to Implement Oil-for-Food Agreement*, WASH. POST, Nov. 26, 1996, at A09 (quoting U.S. Ambassador Madeleine K. Albright, who stated that Oil-for-Food Program was "good news for the Iraqi people and good news for the United States").

73. *See* Paul A. Volcker, *Introduction* to JEFFREY A. MEYER & MARK G. CALIFANO, *GOOD INTENTIONS CORRUPTED: THE OIL-FOR-FOOD SCANDAL AND THE THREAT TO THE U.N.*, at x (2006) (noting that while Oil-for-Food Program was originally temporary, it lasted seven years and involved US\$110 billion in sales of Iraqi oil and purchases of humanitarian goods); William Safire, *Scandal With No Friends*, N.Y. TIMES, Apr. 19, 2004,

Iraqi civilians,⁷⁴ it will forever be infamous for the corruption and maladministration that led to the IIC's extensive investigation of the Program and of the U.N. itself.⁷⁵

1. The Implementation of the Program

Before the implementation of the Oil-for-Food Program in 1996, the U.N. maintained comprehensive sanctions on Iraq since its invasion of Kuwait in 1990.⁷⁶ Although the purpose of the sanctions was to place pressure upon the governing regime of Saddam Hussein, they also effected great harm on the living conditions of the Iraqi people.⁷⁷ Without oil export revenues, Iraq was unable to import sufficient quantities of food and medi-

at A23 (recognizing Oil-for-Food Program as largest humanitarian aid effort U.N. has ever undertaken).

74. See, e.g., KENNETH KATZMAN & CHRISTOPHER M. BLANCHARD, CRS REPORT FOR CONGRESS, IRAQ: OIL-FOR-FOOD PROGRAM, ILLICIT TRADE, AND INVESTIGATIONS CRS-6 to 8 (June 14, 2005) [hereinafter CRS REPORT] (reporting that Oil-for-Food Program substantially eased, but did not eliminate, severe economic hardship in Iraq); The Secretary-General, *Report of the Secretary-General pursuant to paragraphs 7 and 8 of Security Council resolution 1409 (2002)*, ¶¶ 6-33, delivered to the Security Council, U.N. Doc. S/2002/1239 (Nov. 12, 2002) [hereinafter *Report of the Secretary-General*] (recognizing achievements of U.N. Oil-for-Food Program in improving situation in Iraq regarding food, health, nutrition, water and sanitation, agriculture, electricity, telecommunications, education, and housing).

75. See S.C. Res. 1538, U.N. Doc. S/RES/1538 (Apr. 21, 2004) (endorsing Oil-for-Food inquiry and calling for full cooperation of U.N. officials, personnel, and Member States); see also Colum Lynch, *Volcker to Head U.N. Iraq Probe*, WASH. POST, Apr. 17, 2004, at A21 (reporting on appointment of former U.S. Federal Reserve Chairman Paul Volcker as head of probe into Oil-for-Food Program).

76. See S.C. Res. 661, U.N. Doc. S/RES/0661 (Aug. 6, 1990) (implementing comprehensive economic sanctions against Iraq); see also Paul Lewis, *Security Council Votes 13 to 0 to Block Trade with Baghdad*, N.Y. TIMES, Aug. 7, 1990, at A1 (reporting on Security Council vote to order trade and financial boycott on Iraq).

77. See Storer H. Rowley, *Sanctions Take Toll: Iraqis Are Near Brink; Hussein Unscathed Despite U.N. Embargo*, CHIC. TRIB., Oct. 20, 1995, at 1 (pointing out reports of scarcity of foreign exchange for food and medical supplies, increasing malnutrition, rising infant mortality, and other health problems); see also CRS REPORT, *supra* note 74, at CRS-1 (noting that without oil export revenues, Iraq was unable to import sufficient food and medicine, leading to sharp deterioration of living conditions between 1991 and 1995); Volcker, *supra* note 73, at xvii-xviii (citing expert reports that nutritional standards were approaching a point of crisis and public health seriously deteriorated since implementation of sanctions). By the mid-1990s the average Iraqi's food intake was about 1,275 calories per day, compared with the standard requirement of 2,100 calories. See *United Nations: Oil-for-Food Program Provides Lessons for Future Sanctions and Ongoing Reform: Testimony Before the Subcomm. on Nat'l Sec., Emerging Threats, and Int'l Relations and the Comm. on Gov't Reform H.R.*, 109th Cong. 5 (2006) (statement of Joseph A. Christoff, Director, International Affairs and Trade) [hereinafter *Oil-for-Food Program Provides Lessons*] (reporting on Government Accountability Office ("GAO") study examining con-

cal supplies.⁷⁸ The U.N. developed the Oil-for-Food Program as a means of easing this suffering.⁷⁹

Through the Program, the U.N. permitted Iraq to export a limited amount of oil, with the proceeds funding a U.N.-controlled escrow account for approved purchases of humanitarian goods, compensation for victims of the Gulf War, and U.N. administrative expenses.⁸⁰ While Iraq was free to choose the companies with whom it did business,⁸¹ a special sanctions committee of the Security Council, known as the 661 Committee,⁸² was responsible for reviewing and approving each proposed sale of oil or purchase of humanitarian goods.⁸³ The 661 Committee

trol environment U.N. established for managing Oil-for-Food Program in Iraq and other key internal control elements within U.N.).

78. See CRS REPORT, *supra* note 74, at CRS-1 (finding that according to infant and child mortality, caloric intake, and other indicators, living conditions in Iraq deteriorated sharply between 1991 and 1995); Rowley, *supra* note 77 (painting bleak picture of Iraq in regard to embargo's effects on poverty, suffering, malnutrition, hyperinflation, and resentment of international community).

79. See Volcker, *supra* note 73, at xvii-xviii (observing that Oil-for-Food Program was effort to discipline "outlaw" State while improving living conditions for its citizens); Barbara Crossette, *Do More to Aid Nourishment of Very Young, U.N. Tells Iraq*, N.Y. TIMES, Aug. 24, 1999, at A7 (noting that U.N. started Oil-for-Food Program in 1996 to ease civilian suffering under economic sanctions).

80. See Indep. Inquiry Comm. into the U.N. Oil-for-Food Programme, *The Management of the United Nations Oil-for-Food Programme: Volume II – Report of Investigation*, 12, (Sept. 7, 2005) (prepared by Paul A. Volcker, Richard J. Goldstone & Mark Pieth) [hereinafter *Management of the U.N. Oil-for-Food Programme: Volume II*] (recognizing that Resolution 986 did not authorize Saddam Hussein to receive money directly from oil sales, but rather directed Secretary-General to establish escrow account and distribution plan for funds).

81. See *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 29 (acknowledging U.N. belief that most efficient way of selling Iraqi oil was for Iraq to carry out marketing and sales in conformity with normal trading practices and that U.N. engagement in trading Iraqi oil directly or through third party would be highly unusual).

82. The name of the 661 Committee comes from the resolution that authorized the original embargo of Iraq in 1991. See S.C. Res. 661, *supra* note 76 (implementing comprehensive economic sanctions against Iraq).

83. See U.N. Sec. Council, Comm. Established by Resolution 661 (1990), *Procedures to be Employed by the Security Council Committee Established by Resolution 661 (1990) Concerning the Situation Between Iraq and Kuwait in the Discharge of its Responsibilities as Required by Paragraph 12 of Security Council Resolution 986 (1995)*, ¶¶ 5, 8, 26-38, U.N. Doc. S/1996/636 (Aug. 8, 1996) [hereinafter *661 Committee Procedures*] (laying out procedures for 661 Committee review of oil pricing mechanisms and humanitarian contracts under Oil-for-Food Program); see also *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 17 (noting that Security Council entrusted 661 Committee with reviewing and approving all contracts for humanitarian goods and monthly pricing mechanism for oil contracts). While the 661 Committee was responsible for reviewing transactions,

made decisions only by unanimous consent, meaning that all fifteen members of the Security Council had to agree to approve a transaction.⁸⁴ Within the first year of the program, Secretary-General Kofi Annan also established the Office of Iraq Program ("OIP"), which was responsible for administering all aspects of the Program on behalf of the U.N. Secretariat.⁸⁵

Although the U.N. created the Oil-for-Food Program in Iraq with the best of intentions, most remember it for the way in which Saddam Hussein exploited its administrative weaknesses to collect billions of dollars in illicit transactions.⁸⁶ While the IIC's investigation of the Oil-for-Food Program ran much deeper, this Note will focus only on weaknesses in the administration of the program that may help in the analysis of whether a restructured oil-for-food program could operate effectively, or whether the problems are too inherent to overcome.

2. The Problem of Kickbacks

The most important concession the Iraqi government obtained from the U.N. in the negotiations leading up to the Oil-

it is important to note that its rules did not require it to take any action in response to a report of a violation of the sanctions. See *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 20-21 (explaining that with exception of information indicating illegal arms trafficking, 661 Committee rules contained no obligation to inquire or investigate illegal activity).

84. See *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 19 (recognizing that 661 Committee decided on requirement of unanimous consent among all fifteen members despite fact that Security Council itself does not require consensus); *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 6 (acknowledging that each member of 661 Committee had authority to approve, hold, or block any contract for goods exported to Iraq); see also *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 117 (noting that consensus rule of decision-making within 661 Committee limited effectiveness of Committee in responding to attempts by Iraq to manipulate Oil-for-Food Program).

85. See *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 22-23 (describing creation of Office of Iraq Programme ("OIP") as consolidation of Secretariat's Iraq-related activities into single organizational entity, which assumed administration of both sanctions aspects of Resolution 661 and humanitarian aspects of Oil-for-Food Program under Resolution 986).

86. Over the course of the Program, Iraq was able to collect US\$228.8 million in illegal oil surcharges and US\$1.58 billion in illegal inland transportation fees and after-sales service fees on humanitarian contracts. See Indep. Inquiry Comm. into the U.N. Oil-for-Food Programme, *The Management of the United Nations Oil-for-Food Programme: Volume I – The Report of the Committee*, 36, (Sept. 7, 2005) (prepared by Paul A. Volcker, Richard J. Goldstone & Mark Pieth) [hereinafter *Management of the U.N. Oil-for-Food Programme: Volume I*] (providing data concerning illicit income Iraq received prior to and during Oil-for-Food Program).

for-Food Program's establishment was the ability to designate both the buyers of its oil and the sellers of its humanitarian purchases.⁸⁷ Iraq immediately used this privilege to funnel transactions towards companies from nations sympathetic to Iraqi interests.⁸⁸ In 2000, the regime became even more aggressive, requiring that oil purchasers make "surcharge" payments outside the confines of the U.N. escrow account.⁸⁹ Similarly, the Iraqi government conditioned the award of contracts for the delivery of humanitarian goods on the seller's willingness to pay additional fees for "inland transportation" and "after-sales service," which were essentially illegal kickback payments to Iraq disguised as legitimate business expenses.⁹⁰ These illicit payments to the Iraqi government amounted to approximately US\$1.8 billion over the life of the Oil-for-Food Program.⁹¹

The failure to investigate and put an end to these practices is in large part due to the U.N.'s lack of a sufficient administra-

87. Under the Oil-for-Food Program, the Iraqi Ministry of Oil and its marketing arm, Iraq's State Oil Marketing Organization ("SOMO") had full discretion to choose their customers and how much oil to sell to each one. See Indep. Inquiry Comm. into the U.N. Oil-for-Food Programme, *Manipulation of the Oil-for-Food Programme by the Iraqi Regime*, 15-18, (Oct. 27, 2005) (prepared by Paul A. Volcker, Richard J. Goldstone & Mark Pieth) [hereinafter *Manipulation of the Oil-for-Food Programme*] (describing how Iraq's ability to choose its customers allowed it to use oil allocations for political purposes and extract surcharge payments from those who it granted allocations); *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 29 (noting belief within U.N. that most efficient way of selling Iraqi oil was for Iraq to carry out marketing and sales).

88. Saddam Hussein used this privilege to give preferential access to oil allocations to companies from Russia, China, and France—nations advocating the lifting of sanctions against Iraq—while essentially black-listing companies from the United States and United Kingdom. See *Manipulation of the Oil-for-Food Programme*, *supra* note 87, at 16-17 (providing data on Iraq's oil allocations by nationality of beneficiaries, showing Iraq's preferential treatment of Russia, France, and China).

89. See *id.* at 18 (finding that Iraq imposed surcharges on oil shipments from early autumn 2000 until late 2002 and that surcharge amount varied from about ten cents to fifty cents per barrel throughout that period).

90. See *id.* at 266 (noting that Iraq began to charge mandatory "transportation fees" in mid-1999, and about a year later, expanded scheme to include mandatory "after-sales-service fees" equal to ten percent of original contract value). Significantly, Iraq did not require suppliers to pay these fees at their own expense. Rather, it incorporated the charges into the contracts it signed with suppliers, which the U.N. funded through the Program's escrow account. See *id.* at 269, 277 (observing that through this system, Iraq illicitly obtained escrow funds and only disadvantage to suppliers was having to lay out money for fees before U.N. reimbursed them).

91. This number includes US\$228.8 million in oil surcharges and US\$1.58 billion in humanitarian kickbacks. See *Management of the U.N. Oil-for-Food Programme: Volume I*, *supra* note 86, at 36 (providing data concerning illicit income Iraq received prior to and during Oil-for-Food Program).

tive structure to effectively control this large and complex program.⁹² In its investigation, the IIC observed that within the U.N. agencies responsible for the functioning of the Program, there was an almost uniform tendency to avoid responsibility for performing the tasks necessary to ensure the Program's success.⁹³ The Security Council's 661 Committee paid little attention to oversight of the economic activities related to the Program, including monitoring the price and value of Iraq's contracts.⁹⁴ This was due in part to the fact that the Security Council understaffed nearly every facet of the oversight process, particularly the review of commodity contracts.⁹⁵

92. See *id.* at 61 (observing that U.N. was ill-equipped in terms of experience and administrative capacity to deal with political pressures and sudden demands of exceptionally large and complex humanitarian program).

93. See *id.* at 60 (concluding that combination of providing Iraq with far-reaching powers to shape Oil-for-Food Program and retaining substantial elements of administrative and operational control within Security Council's 661 Committee led to dilution of individual and institutional responsibility).

94. See Indep. Inquiry Comm. into the U.N. Oil-for-Food Programme, *The Management of the United Nations Oil-for-Food Programme: Volume III – Report of Investigation*, 31-32, (Sept. 7, 2005) (prepared by Paul A. Volcker, Richard J. Goldstone & Mark Pieth) [hereinafter *Management of the U.N. Oil-for-Food Programme: Volume III*] (reporting that customs experts lacked expertise in international commodities, conducted only limited review of contracts, and were unclear about scope of OIP's authority to reject contracts on pricing grounds); *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 4 (commenting that U.N. established "weak control environment" for enforcing sanctions and managing Oil-for-Food Program).

95. For example, the 661 Committee's rules required it to select "at least four independent experts in international oil trade" to assist with ensuring that Iraq sold oil only at fair market value and to ensure that transactions were not fraudulent or deceptive. See *661 Committee Procedures*, *supra* note 83, ¶¶ 1, 9 (providing that 661 Committee was to select oil overseers to assess pricing mechanisms and ensure that all contracts comply with Resolution 986). When one overseer resigned within several months and another resigned for health reasons in 1998, the Committee did not replace them. Then in 1999, another resigned, meaning just one overseer was responsible for billions of dollars in oil deals until the Committee finally agreed on replacements in the summer of 2000. See *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 121-25 (describing events leading to inadequate staffing of oil overseers); *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 13 (suggesting that inadequate number of overseers monitoring Iraq's oil pricing over fourteen month period from June 1999 to August 2000 was factor in Iraq's ability to levy illicit surcharges on oil contracts); see also *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 7 (noting that while United States dedicated approximately sixty personnel to examine humanitarian contracts for items that Iraq could use for military purposes, neither United States nor U.N. paid such close attention to pricing anomalies); *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 14 (noting that Office of Internal Oversight Services ("OIOS") assigned only between two and six auditors to Program when it needed twelve for every US\$1 billion in expenditures, or more than 160 auditors at Program's height in 2000).

Yet another problem was that no single committee was accountable for the management and oversight of the program in its entirety. The Security Council failed to efficiently allocate the distribution of administrative duties between the 661 Committee and the OIP, leading to confusion between them as to which was responsible for particular administrative tasks.⁹⁶ Consequently, neither committee took action to stop Iraq from demanding kickbacks on sales of oil and purchases of humanitarian goods, even after reports of such behavior surfaced in the international media.⁹⁷

3. Illicit Oil Smuggling

Another disturbing finding of the IIC was that throughout the course of the Oil-for Food Program, Iraq sold substantial amounts of oil directly to Jordan, Turkey, and Syria.⁹⁸ These shipments explicitly contravened the U.N. embargo on sales of Iraqi oil outside the confines of the Program.⁹⁹ Over the life of the embargo, from 1991 to 2003, the Iraqi government was able to smuggle between US\$9 billion and US\$11 billion in oil to its neighboring countries by truck, pipeline, and tanker.¹⁰⁰

96. For example, OIP was responsible for examining commodity contracts for price and value before submitting them to the 661 Committee, yet OIP did not have the authority to reject contracts on pricing grounds or hire customs experts with the ability to conduct pricing evaluations. See *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 9-10 (commenting on absence of clear lines of authority and responsibility within administration of Oil-for-Food Program in Iraq).

97. See, e.g., Barbara Crossette, *Iraq is Running Payoff Racket*, *U.N. Aides Say*, N.Y. TIMES, Mar. 7, 2001, at A1 (describing how Iraq included fraudulent supplemental charges such as "inland transportation" in its humanitarian contracts); James Norman, *Petrodollars*, PLATT'S OILGRAM NEWS, Nov. 16, 1998, at 3 (predicting how Iraq would likely use below-market oil pricing to derive illicit payments to fund illegal activities).

98. See generally *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 185-259 (providing extensive discussion of Iraq's illegal smuggling operations and Security Council's awareness of massive amounts of border trade activity outside Oil-for-Food Program).

99. See S.C. Res. 986, U.N. Doc. S/RES/986 (Apr. 14, 1995) (authorizing limited export of petroleum from Iraq provided that proceeds benefit U.N.-controlled humanitarian escrow account); S.C. Res. 661, *supra* note 76 (implementing comprehensive economic sanctions against Iraq).

100. See COMPREHENSIVE REPORT OF THE SPECIAL ADVISOR TO THE DCI ON IRAQ'S WMD 24, 37 (Sept. 20, 2004) [hereinafter DUELFER REPORT] (estimating that Iraq sold US\$8 billion in oil under bilateral trade Protocols outside of Program and US\$1.2 billion in oil through border and private sector cash sales, totaling US\$9.2 billion); *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 187-89 (calculating that Iraq smuggled US\$6 billion in oil to Jordan and derived US\$767 million in oil sales

Members of the 661 Committee noticed these illicit oil sales, but took no action to halt the transactions or recognize them as violations of the sanctions.¹⁰¹ In fact, successive U.S. administrations issued annual waivers exempting Jordan and Turkey from unilateral U.S. sanctions for violating the U.N. embargo.¹⁰² The United States and other 661 Committee members recognized that the economies of Jordan and Turkey were dependent on Iraqi oil, and decided to ignore these illegal sales to preserve support for the Oil-for-Food Program and the Middle East peace process.¹⁰³ Interestingly, the United Kingdom and the United States did push for an investigation into illegal oil smuggling to Syria, but Syria's allies in the Security Council, France and Russia, frustrated those efforts.¹⁰⁴ This led to a stalemate in the Security Council, where no permanent member took action to end these known, flagrant abuses of the Program. The failure of the U.N. Security Council and the 661 Committee to act on such clear violations was characteristic of its attitude towards a number of cumulative abuses of the Oil-for Food Program in Iraq.¹⁰⁵

proceeds from Turkey, US\$2.81 billion from Syria, and sold US\$1 billion in oil products to various other entities).

101. See *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 6 (noting Security Council's failure to address pre-existing trade between Iraq and other Member States and problems this failure created); CRS REPORT, *supra* note 74, at CRS-16 (pointing out that Member States took no direct action to punish or stop illegal oil sales until Operation Iraqi Freedom in March 2003).

102. See *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 6 (reporting that because Jordan and Turkey are important allies of United States, it refused to implement penalties for violating Oil-for-Food sanctions); CRS REPORT, *supra* note 74, at CRS-17 n.20, CRS-18 (noting that every fiscal year since 1994, Congress included provision in most foreign aid appropriations cutting U.S. aid to countries that violated Iraq embargo).

103. See CRS REPORT, *supra* note 74, at CRS-17 to 18 (acknowledging importance of Jordan and Turkey to U.S. foreign policy initiatives in Middle East); *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 194 (describing decision of 661 Committee, without debate, to "take note" of Jordan's importation of Iraqi oil in violation of Oil-for-Food Program); *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 229 (citing Russian and Norwegian officials as saying 661 Committee never addressed reports of illegal oil shipments between Iraq and Turkey, and that there was "tacit understanding" that Turkey would access Iraqi oil).

104. See *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 247 (discussing United Kingdom's request that 661 Committee send letter of inquiry to Syria, and France and Russia's objections on basis that such action "would be political").

105. See, e.g., Indep. Inquiry Comm. into the U.N. Oil-for-Food Programme, *Interim Report*, 121, (Feb. 3, 2005) (prepared by Paul A. Volcker, Richard J. Goldstone & Mark Pieth) (alleging that Benon Sevan, Executive Director of OIP, requested, received, and benefited from illegal Iraqi oil allocations and failed to inform 661 Committee and

4. The Forgotten Accomplishments of the Program

While most commentaries on the Oil-for-Food Program in Iraq focus on its failures, it is also important to consider its accomplishments when analyzing the prospects of a possible initiative in Sudan. When the U.N. first established the Program, its primary fear was that it would allow Saddam Hussein access to military supplies and dual-use technologies that Iraq could use in the development of weapons of mass destruction ("WMD").¹⁰⁶ Throughout the existence of the Oil-for-Food Program in Iraq, the U.N. successfully screened military and dual-use items from contracts for the provision of humanitarian goods.¹⁰⁷ This is in large part due to the efforts of the United States, which devoted its own resources toward the review of commodity contracts and was responsible for ninety percent of the holds that the 661 Committee placed on contracts.¹⁰⁸ Some reports even claim that the sanctions had the effect of cutting off Iraq's ability to import conventional weapons and finance its military, intelligence, and security forces.¹⁰⁹

The Security Council's 661 Committee also showed that when it recognized and decided to address a problem in the ad-

Security Council about Iraqi humanitarian kickback scheme); *id.* at 77 (noting that Banque Nationale de Paris S.A., bank chosen to host U.N. escrow account, ranked second-to-last in cumulative ranking of banks under consideration); *supra* notes 98-101 (describing 661 Committee's failure to halt oil smuggling despite full awareness of such activities).

106. See Barbara Crossette, *U.S. Objects to Details of Plan to Let Iraq Sell Oil for Food*, N.Y. TIMES, July 2, 1996, at A5 (noting that sanctions would remain in place until Iraq dismantles its program to develop weapons of mass destruction ("WMD")); John M. Goshko, *U.N., Iraq to Discuss Oil Sales*, WASH. POST, Feb. 28, 1996, at A22 (stating that one purpose of sanctions was to force Iraq to eliminate its program of building WMD).

107. See *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 6 (acknowledging Oil-for-Food Program's success in constraining Iraq's ability to import military items).

108. See *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 6-7 (noting that U.S. experts assessed each item for its military application and whether item was appropriate for its stated end user); JOHN G. RUGGIE, U.N. ASSOC. OF THE U.S., THE U.N. OIL-FOR-FOOD PROGRAMME: WHAT WENT WRONG—AND RIGHT? 3 (2004) (reporting that United States and United Kingdom held up several thousand contracts due to dual-use technology concerns).

109. See U.S. GEN. ACCOUNTING OFFICE, WEAPONS OF MASS DESTRUCTION, U.N. CONFRONTS SIGNIFICANT CHALLENGES IN IMPLEMENTING SANCTIONS AGAINST IRAQ 14-15, GAO-02-625 (2002) [hereinafter GAO REPORT: WEAPONS OF MASS DESTRUCTION] (observing that while Iraq's annual military expenditures averaged over US\$18.8 billion between 1980 and 1990, U.N.-imposed sanctions decreased that number to US\$1.4 billion annually); *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 7 (citing study of Iraq Survey Group).

ministration of the Program, it was able to curtail the illicit conduct. For example, in late 2000 and early 2001, U.N. oil overseers noticed that Iraq's oil prices were far below fair market value and the Committee began to receive reports that Iraqi officials were demanding illegal surcharges on contracts.¹¹⁰ In response, the United Kingdom and United States successfully implemented a retroactive pricing plan, which curbed the ability of the Iraqi government to elicit surcharges on oil contracts by delaying pricing until the time of delivery.¹¹¹ After this, it was no longer economical for purchasers to pay Iraq's surcharge on top of the cost of the oil, and the practice quickly dissipated.¹¹²

Most importantly, however, the Oil-for-Food Program was successful in improving the standard of living and easing economic hardship in Iraq. The Program generated approximately US\$64.2 billion in revenues and delivered US\$39 billion worth of humanitarian supplies and equipment.¹¹³ With the implementation of the Program in 1996, the nutritional intake of Iraqis rose from 1200 kilocalories to 2200 kilocalories per day, and malnutrition rates among children under the age of five were cut in half.¹¹⁴ In the health sector, the U.N. observed an increase in major surgeries performed, a reduction in communi-

110. See *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 136 (noting that on December 13, 2000, all three oil overseers first advised 661 Committee of information substantiating existence of Iraq's oil surcharge policy); *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 13 (reporting that in early 2001 United States informed 661 Committee of concerns regarding illegal surcharges on oil contracts).

111. Retroactive pricing involved setting the price of the oil at the time Iraq delivered it to the purchaser. This helped ensure the U.N. collected the fair market price of the oil and frustrated Iraqi attempts to extract a surcharge. See *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 146 (describing advent of retroactive pricing by United Kingdom and United States at suggestion of oil overseer); *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 13 (illustrating initiation and functioning of retroactive oil pricing in Oil-for-Food Program).

112. See *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 150 (taking note of press reports in mid-August, 2002, suggesting that Iraq retreated on its surcharge demands while oil sales fell as result of retroactive pricing).

113. See CRS REPORT, *supra* note 74, at CRS-6 (observing that total funds available to Oil-for-Food Program were US\$69.5 billion including interest and currency gains); see also *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 1 (noting that as of November 2003, U.N. delivered US\$31 billion in humanitarian goods and services to Iraq).

114. See CRS REPORT, *supra* note 74, at CRS-8 (describing successes of Oil-for-Food Program in getting food rations to Iraqi people); *Report of the Secretary-General*, *supra* note 74, ¶¶ 6, 13 (pointing out how Oil-for-Food Program benefited food sector and nutrition in Iraq).

cable diseases, and U.N. agencies managed to halt the deterioration of water facilities.¹¹⁵ The Program also gradually improved the provision of electricity in Iraq¹¹⁶ and made great strides in providing schools with the necessary supplies to maintain an environment conducive to learning.¹¹⁷ Although the implementation of the Oil-for-Food Program in Iraq was far from perfect, evaluation of its successes and failures has provoked numerous proposals of ways to reform the Oil-for-Food framework and the administrative structure of the U.N.¹¹⁸

B. *Fixing the Oil-for-Food Blueprint*

1. Administrative Reforms

Central to the IIC's findings regarding the implementation of the Oil-for-Food Program in Iraq is the urgent need of administrative reform within the U.N. The Committee noted that the U.N.'s administrative infrastructure in 1996 was not suitable for meeting the demands of such a large, complex humanitarian program.¹¹⁹ The IIC concluded that the Secretary-General, the U.N.'s chief political and diplomatic official, needs the assistance of a chief operating officer ("COO") in controlling administrative functions such as personnel and the budget.¹²⁰ Placing ad-

115. The U.N. observed reduced numbers of cholera, malaria, measles, mumps, meningitis and tuberculosis cases, and noted that there had been no cases of polio in thirty-two months due to immunization campaigns. *See Report of the Secretary-General, supra* note 74, ¶¶ 10, 15 (reporting significant improvement in delivery of health care services and availability of potable water within Iraq); *see also* CRS REPORT, *supra* note 77, at CRS-8 (describing "notable" achievements in health and sanitation sectors).

116. *See* CRS REPORT, *supra* note 74, at CRS-8 (noting provision of electricity had been "gradually improving" in November 2002); *Report of the Secretary-General, supra* note 74, ¶¶ 19-20 (reporting on decrease in duration and number of scheduled power outages in Iraq).

117. *See* CRS REPORT, *supra* note 74, at CRS-8 (mentioning provision of 1.2 million desks, or sixty percent of those needed, whereas students formerly sat on bare floors); *Report of the Secretary-General, supra* note 74, ¶¶ 23-24 (noting that local textbook production increased along with provision of necessary school supplies).

118. *See, e.g.,* RUGGIE, *supra* note 108, at 5 (warning against using failures of Oil-for-Food Program as pretext for undermining legitimacy and utility of U.N.); Volcker, *supra* note 73, at xxxi-xxxiii (expressing confidence that lessons from Oil-for-Food Program can go towards improving administration of U.N.).

119. *See Management of the U.N. Oil-for-Food Programme: Volume I, supra* note 86, at 61 (observing that U.N. was "ill-equipped in terms of experience and administrative capacity" to deal with political pressures and sudden demands of exceptionally large and complex humanitarian program).

120. The creation of a U.N. Chief Operating Officer ("COO") would help to insulate U.N. administrators from political pressure in management decisions and provide

ministrative responsibility in a central location, the IIC stated, would provide authority and clear reporting lines that were lacking at the time of the Oil-for-Food Program in Iraq.¹²¹ A COO would help in implementing effective controls and audits within future programs to ensure that they have adequate funds and staff, and are free of internal corruption.¹²²

According to the IIC, a central administrative authority would also improve coordination between bodies and agencies within the U.N.¹²³ In setting up the Program in Iraq, the Security Council delegated to itself, through its 661 Committee, operational control responsibilities that were often in tension with powers of the U.N. Secretariat and the OIP.¹²⁴ This led to the dilution of individual and institutional responsibility for the Pro-

sufficient authority for effective management discipline. The General Assembly of the U.N. would appoint the COO on the recommendation of the Security Council. *See id.* at 63 (noting that position of COO would free Secretary-General of many duties more suitable for chief administrative officer); *see also id.* at 61 (acknowledging that U.N. does not choose Secretary-General for managerial or administrative skills and does not provide him with necessary instruments to exercise strong executive control).

121. *See Management of the U.N. Oil-for-Food Programme: Volume III, supra* note 94, at 31-32 (reporting lack of clear organizational structure between OIP and divisions responsible for implementing Program, most notably Contracts Processing and Monitoring Division ("CPMD") and Programme Management Division ("PMD")); *Management of the U.N. Oil-for-Food Programme: Volume I, supra* note 86, at 62 (citing Oil-for-Food Program's absence of authority and clear reporting lines, especially to Secretariat's senior management, as among most notable failures of Program); *Oil-for-Food Program Provides Lessons, supra* note 77, at 8-10 (finding that no single entity was responsible for Iraq Program in its entirety, which undermined management and oversight capabilities).

122. *See Management of the U.N. Oil-for-Food Programme: Volume I, supra* note 86, at 61 (noting that political nature of position of Secretary-General undermines some aspects of executive control, most notably personnel, where professional competence must compete with political demands of Member States); *id.* at 62 (positing that corruption, which reached upper levels of Oil-for-Food Program management, is symptomatic of absence of strong institutional ethics essential to U.N.).

123. *See id.* at 62 (noting inability of U.N. to assess actual spending or insist upon common accounting standards between U.N. agencies in Oil-for-Food Program); *id.* at 64 (suggesting that U.N. establish high-level coordinating bodies, with real decision-making abilities and powers, for all major cross-agency relief and emergency programs).

124. *See, e.g., Management of the U.N. Oil-for-Food Programme: Volume II, supra* note 80, at 181-82 (finding that 661 Committee members believed it was OIP's responsibility to put holds on contracts for pricing concerns); *Management of the U.N. Oil-for-Food Programme: Volume III, supra* note 94, at 25 (noting that OIP's Chief Customs Expert believed OIP lacked authority to reject contracts on account of irregularities); *see also Management of the U.N. Oil-for-Food Programme: Volume II, supra* note 80, at 152-54 (describing continuously changing responsibilities of 661 Committee and OIP in regard to review of humanitarian contracts).

gram.¹²⁵ As Jeffrey A. Meyer and Mark G. Califano note in their condensation of the IIC reports, "When things went awry—and they did— . . . no one was in charge."¹²⁶ The IIC concluded that creating a central administrative office, under the control of a COO, would instill this missing sense of institutional responsibility in the administrative infrastructure of the U.N. itself, preventing problems that plagued the Oil-for-Food Program in Iraq from occurring in the future.¹²⁷

Although the U.N. is still operating without a COO, it has managed to improve its administrative structure in some respects. According to a recent U.S. Government Accountability Office ("GAO") report,¹²⁸ the U.N. has taken significant steps towards improving oversight procedures,¹²⁹ strengthening the Office of Internal Oversight Services ("OIOS"),¹³⁰ improving U.N. procurement practices,¹³¹ and improving the management

125. See MEYER & CALIFANO, *supra* note 73, at 178 (contending that Security Council's failure to clearly define broad purposes, policies and administrative controls of Oil-for-Food Program, and leaving Iraqi regime with far too much initiative and decision-making powers, led to dilution of institutional and individual responsibility for implementation of Program); Volcker, *supra* note 73, at xxxix (commenting on Security Council's failure to respond to and redress reliable reports of exploitation of Oil-for-Food Program).

126. See MEYER & CALIFANO, *supra* note 73, at 178 (suggesting that weaknesses in administrative structure of Oil-for-Food Program led to delay or complete avoidance of important decisions).

127. See *Management of the U.N. Oil-for-Food Programme: Volume III*, *supra* note 94, at 169 (describing reluctance of Secretary-General and Deputy Secretary-General to accept responsibility for oversight and supervision of the OIP, which reported to Secretariat, evidencing basic confusion within highest offices of U.N.).

128. U.S. GOV'T ACCOUNTABILITY OFFICE, UNITED NATIONS: PROGRESS ON MANAGEMENT REFORM EFFORTS HAS VARIED GAO-08-84 (2007) [hereinafter GAO REPORT: UNITED NATIONS] (reviewing progress of U.N. management reform initiatives in ethics, oversight, procurement, management operations of Secretariat, and review of programs and activities).

129. See *id.* at 15-17 (noting establishment of Independent Audit Advisory Committee ("IAAC") in June 2007 to "provide an external, independent assessment of U.N. oversight capabilities based on best practices in private sector as well as experiences of other international institutions").

130. See *id.* at 18-20 (acknowledging strengthening of Office of Internal Oversight Services' capacity of its internal audit, investigation, and evaluations and inspections sections).

131. See *id.* at 20-23 (recognizing that U.N. has made progress in strengthening procurement procedures for U.N. staff and suppliers, developing training program for U.N. procurement staff, and developing risk management framework). *But see id.* at 23-24 (reporting that U.N. has made little or no progress in establishing independent bid protest system or lead-agency concept for procurement).

operations of the Secretariat.¹³² On the other hand, the GAO also found that little or no progress has been made in reforming certain budgetary and financial management functions¹³³ and reviewing U.N. programs and activities.¹³⁴ Unfortunately, disagreements among Member States on reform efforts and a lack of comprehensive implementation plans for reform proposals have impeded U.N. efforts to enact changes in its management structure.¹³⁵

2. Preventing Kickback Payments

The IIC concluded in its final report that from the very beginning, the Security Council's basic design of the Program contained inadequate safeguards to prevent Iraq from manipulating the system.¹³⁶ The Security Council failed to anticipate that Iraq would abuse the Program, and even once it became aware of the practices, it did nothing to stop it.¹³⁷ Measures such as limiting the number or volume of contracts that Iraq could give to companies from any one Member State and restricting Iraq from offering allocations of oil to individual, political beneficiaries may have impaired Saddam Hussein's ability to "buy" political support within the international community.¹³⁸ The above-men-

132. *See id.* at 25-28 (noting progress in improving human resource functions and information technology). *But see id.* at 29-30 (acknowledging that U.N. has made little or no progress in reforming its internal justice system or improving delivery of certain services such as payables, receivables, and payroll processes and staff benefits administration).

133. *See id.* at 29 (highlighting failure of U.N. General Assembly to approve or take any action on Secretary-General's reform proposals to improve cash management and operational flexibility, retain budget surpluses for use in subsequent periods, and charge interest on arrears of Member States' contributions).

134. *See id.* at 30-33 (observing that although Member States agreed to review all U.N. mandates with goal of strengthening and updating them to reflect needs of organization, ongoing disagreements substantially diminish progress in these efforts).

135. *See id.* at 33-35 (observing lack of comprehensive plan to implement management reform efforts within U.N. and inherent difficulties in achieving consensus among 192 diverse Member States).

136. *See Management of the U.N. Oil-for-Food Programme: Volume I, supra* note 86, at 3 (concluding that neither Security Council nor Secretariat leadership was in command of Oil-for-Food Program, leading to dilution of authority at all levels).

137. *See id.* (noting vast amount of power Security Council gave to Iraq in designing and implementing Oil-for-Food Program and absence of effective auditing and management controls).

138. *See id.* at 27 (recognizing that Iraq gave contract preferences to companies from countries sympathetic to lifting of sanctions, most notably Security Council members Russia, France and China).

tioned administrative reforms would also help to ensure that enough funding and personnel are available to adequately inspect agreements and contracts that arise from a future program.¹³⁹ Ensuring fair and reasonable prices for goods can mitigate the possibility of kickbacks by destroying the financial incentive for companies to participate.¹⁴⁰

Additionally, much of the fallout from the IIC's investigation into the Oil-for-Food Program in Iraq will likely deter corporations and individuals from violating U.N. sanctions in the future. U.S. federal authorities recently reached agreements with a number of large oil companies including Vitol, Chevron, and El Paso Corp., whereby the companies will pay millions of dollars in restitution and fines for Oil-for-Food Program violations.¹⁴¹ Six people have also pled guilty to criminal charges related to the Oil-for-Food Program in Iraq, including former Coastal Corporation Chairman Oscar Wyatt, who was sentenced to one year and one day in prison for his role in the scandal.¹⁴² Another four defendants, including Benon Sevan, the Executive Director of the OIP, have not appeared in court and are considered fugitives by U.S. federal prosecutors.¹⁴³ A number of other nations

139. See, e.g., *id.* at 61-63 (suggesting that creation of U.N. COO would centralize responsibility for management of U.N. programs); *Management of the U.N. Oil-for-Food Programme: Volume III*, *supra* note 94, at 169 (proposing that creation of central administrative office would instill sense of institutional responsibility in U.N.).

140. See *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 7 (commenting that Iraq may not have been able to extract kickback payments if U.N. did not neglect its responsibility to review commodity contract prices).

141. See Ramsey al-Rikabi, *Vitol Pleads Guilty to Oil-for-Food "Surcharges"*, INT'L OIL DAILY, Nov. 21, 2007 (noting that under agreement, Chevron will pay US\$30 million and Vitol US\$17.5 million in restitution and fines); see also Bruce Zagaris, *More Companies Settle U.S. FCPA Charges*, INT'L ENFORCEMENT L. REP., Dec. 2007 (reporting that York International recently agreed to pay US\$10 million penalty for paying kickbacks to Iraqi government for air-conditioning, ventilation, and refrigeration equipment and services contracts).

142. See al-Rikabi, *supra* note 141 (providing commentary on guilty pleas stemming from Oil-for-Food investigation); *Texan Sentenced in Oil-for-Food Deal*, L.A. TIMES, Nov. 28, 2007, at A21 (discussing sentencing of oil tycoon Oscar Wyatt, who paid secret kickbacks to Iraq to win oil contracts).

143. The other three fugitives are Kathy Miguel and Mohammed Saidji, who allegedly worked with Oscar Wyatt, and Ephraim Nadler, an associate of Benon Sevan. See al-Rikabi, *supra* note 141 (reporting on indictments for activities related to Oil-for-Food Program); Press Release, U.S. Dep't of Just., U.S. Indicts Former Executive Director of U.N. Oil-for-Food Program, and United States Businessman (Jan. 16, 2007), available at <http://newyork.fbi.gov/dojpressrel/pressrel07/unitednationsfraud011607.htm> (announcing indictments of Benon Sevan and Ephraim Nadler).

around the world have also sought evidence from the IIC for use in criminal prosecutions, including Australia, Britain, France, Germany, India, Italy, Jordan, Thailand, Sweden, Switzerland, and the United Kingdom.¹⁴⁴

3. Preventing Smuggling Operations

Another lesson from the Oil-for-Food investigation is the critical importance of considering the effect of sanctions on the neighbors and trading partners of the target nation. In formulating the Program in Iraq, the Security Council did not address this question by constructing special provisions for neighboring countries that were dependent on Iraqi oil.¹⁴⁵ As a consequence, Jordan, Turkey, and Syria were able to purchase oil outside the confines of the Program, allowing the Iraqi regime to collect far more revenue than even the illegal surcharges and kickbacks produced.¹⁴⁶ In any future sanctions program, the U.N. must, therefore, consider the impact that the loss of trade might have on surrounding countries.¹⁴⁷ Specific provisions that allowed these countries to obtain discounted oil within the confines of the Program may have prevented the practice of smuggling in Iraq.¹⁴⁸

144. See Robert McMahon, Council on Foreign Relations, *The Impact of the U.N. Oil-for-Food Scandal* (May 11, 2006), <http://www.cfr.org/publication/10675/> (providing information on responses of countries around world to Oil-for-Food scandal); see also Tim Johnston, *6 Australians Face Millions in Fines for Iraq Kickbacks*, INT'L HERALD TRIB., Dec. 21, 2007, at 3 (discussing civil cases in Australia surrounding illegal kickback payments of Australian Wheat Board to Saddam Hussein).

145. See *Management of the U.N. Oil-for-Food Programme: Volume II*, *supra* note 80, at 204 (reporting that United Kingdom official stated that political considerations led 661 Committee to not include trade between Iraq and Jordan under Program); *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 6 (noting Security Council's failure to address pre-existing trade between Iraq and other Member States).

146. See *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 6 (reporting that Iraq primarily conducted illicit oil sales on basis of formal trade agreements); Press Release, Indep. Inquiry Comm. into the U.N. Oil-for-Food Programme, *Illicit Oil-for-Food Programme Payments of Nearly \$2 Billion to Saddam Hussein* (Oct. 27, 2005) (estimating value of oil smuggled outside of Program was US\$11 billion, while kickbacks and surcharges amounted to US\$1.8 billion).

147. See *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 15 (concluding that Security Council may have prevented illicit oil sales by Iraq had it considered impact that loss of trade might have on surrounding countries); see also McMahon, *supra* note 144.

148. See *Oil-for-Food Program Provides Lessons*, *supra* note 77, at 15 (acknowledging that if Security Council considered impact of sanctions on neighboring countries, it could have constructed provisions to prevent illegal smuggling).

III. *AN OIL-FOR-FOOD PROGRAM IN SUDAN*

While the ongoing situation in Darfur has had the attention of the international community for over four years,¹⁴⁹ the U.N. has failed to end human rights violations in the region and provide humanitarian support to displaced civilians.¹⁵⁰ A complete lack of cooperation from the government of Sudan combined with Chinese attempts to water-down Security Council resolutions has so far prevented the international community from bringing human rights violators to justice and ending the continuous cycle of violence in Darfur.¹⁵¹ As a result, the Sudanese government continues to fund attacks against rebel groups and unarmed civilians while actively preventing humanitarian assistance from reaching Darfur.¹⁵² To achieve results in Sudan, the U.N. Security Council must take multilateral, decisive action to end widespread human rights abuses and provide security for Sudanese civilians.¹⁵³

This Part argues in favor of the creation of a U.N. oil-for-food program in Sudan, which would be similar in many ways to the U.N. Oil-for-Food Program in Iraq. It begins by setting out the structure of this proposed program, and describes how it would operate in Sudan. Next, it examines how such a program would affect China's economic and political interests in the region and beyond, and concludes that China is not likely to interfere with its creation. Finally, this Part explores why this oil-for-food program would be successful in helping to achieve a lasting peace in the Darfur region.

A. How the Oil-for-Food Program for Darfur Would Operate

Similar to the U.N. Oil-for-Food Program in Iraq, the program in Sudan would allow the continued export of Sudanese oil as long as all revenues from oil sales flow directly into a U.N.-

149. See *supra* notes 1-2 and accompanying text (referring to numerous Security Council resolutions dealing with Sudan and conflict in Darfur).

150. See *supra* notes 45-49 and accompanying text (reporting on increasing violence and worsening humanitarian conditions in early 2007).

151. See *supra* notes 35-39 and accompanying text (discussing China's threats to exercise its veto power in Security Council if Council did not significantly weaken resolutions against government of Sudan).

152. See *supra* notes 3, 47 and accompanying text (citing continuing reports of massacres of Darfuri people and humanitarian aid workers).

153. See *supra* note 69 and accompanying text (acknowledging need for multilateral action to achieve results in Sudan).

administered fund, set up by a designated international financial institution.¹⁵⁴ In this case, the U.N. would only allow Sudan to sell to existing customers at market prices.

The U.N. would then allocate a portion of those funds to pay for administrative expenses, substantiated production expenses that oil producers incur, and a victim compensation fund for the people of Darfur, while the balance would go towards recovery projects and approved purchases of humanitarian goods.¹⁵⁵ Limiting the ability of Sudan to choose its customers would prevent the Khartoum regime from trading oil for political favors, as happened in Iraq.¹⁵⁶ The Security Council would also delegate oversight authority to a single, adequately staffed U.N. committee responsible for all aspects of the program.¹⁵⁷ At the outset, this committee would be responsible for establishing provisions to assist any nation claiming that the sanctions on Sudan would harm its national interests.¹⁵⁸ Additionally, the U.N. would call on all Member States to assist in ensuring the implementation and effectiveness of the program.

B. *China's Interests and the Oil-for-Food Program for Darfur*

In previous years, convincing China to cooperate in the implementation of any sort of sanctions regime against the government of Sudan would have been a hopeless endeavor.¹⁵⁹ The current state of affairs, however, suggests it would be advantageous for China to participate in multilateral action against Sudan for a number of reasons. In recent months, China has become increasingly concerned with Sudan's reluctance to cooper-

154. See *supra* note 80 and accompanying text (discussing fund set up for Oil-for-Food Program in Iraq).

155. See *supra* note 80 and accompanying text (detailing allocation of funds U.N. collected through Oil-for-Food Program in Iraq).

156. See *supra* note 88 and accompanying text (noting Iraq's preference to provide oil allocations to nations that supported its political agenda).

157. See *supra* notes 95-96 and accompanying text (recognizing that major problems with 661 Committee were that Security Council understaffed Committee and failed to clearly define its responsibilities).

158. See *supra* notes 98-103 and accompanying text (discussing failure of 661 Committee to ease burden of Iraqi sanctions on neighboring nations, leading to widespread smuggling operations).

159. See *supra* notes 35-38 and accompanying text (describing China's policy of non-interference, and its particularly strong opposition to any form of international intervention in Sudan).

ate with international initiatives to secure peace in Darfur.¹⁶⁰ Some experts believe this is a sign that China is beginning to support the notion that a national government has a responsibility to protect its citizens from harm.¹⁶¹ Cooperating in the implementation of an oil-for-food program in Sudan would provide China with an opportunity to prove its good intentions to the international community, as well as quiet critics who are threatening to protest China's stance on Darfur at the 2008 Beijing Olympic games.¹⁶²

If China does not take some sort of action to halt the suffering in Darfur, it risks damaging its reputation as a responsible stakeholder in Africa and its foreign policy goal of making economic and political inroads into Sub-Saharan Africa.¹⁶³ Most importantly, the establishment of an oil-for-food program in Sudan would likely have little to no negative effect on China's strategic economic and political interests in Sudan. China could continue to buy Sudanese oil in much the same way as it does presently,¹⁶⁴ the only difference being that the funds would go into a U.N.-administered escrow account. While the Sudanese government will certainly not appreciate the imposition of sanctions, Sudan is too dependent on China for trade and economic aid to let this seriously harm their relationship.¹⁶⁵

Lastly, it would be highly unusual for China to oppose the oil-for-food program in Sudan by exercising its veto power in the Security Council. China has used that power only three times as a permanent member of the Security Council, and has generally

160. See *supra* notes 51-54, 58-62 and accompanying text (citing criticism of China for its stance on Darfur and China's recent assumption of more active role in solving humanitarian crisis in Sudan).

161. See *supra* notes 56-57 and accompanying text (discussing Chinese President Hu Jintao's remarks concerning need to improve situation in Darfur).

162. See *supra* notes 50-52 and accompanying text (describing recent criticism of China regarding its continued support of Sudanese government).

163. See *supra* note 53 and accompanying text (acknowledging growing discontent among African leaders regarding Sudanese government's actions in Darfur).

164. See *supra* note 18 and accompanying text (noting that China draws eight percent of its oil from Sudan).

165. See *supra* notes 17-20 and accompanying text (observing that China is Sudan's largest foreign investor, purchases sixty to eighty five percent of its oil production, seventy percent of its global exports, and recently pledged over US\$210 million in various forms of economic aid).

chosen to abstain on resolutions relating to Sudan.¹⁶⁶ Abstaining would allow China to maintain its positive relations with Sudan while avoiding a confrontation with the Western powers.¹⁶⁷ Taking into consideration the current pressure on China to contribute to multilateral pressure on the Sudanese government, China's interests in establishing itself as a responsible stakeholder in Africa, and its history of voting in the Security Council, it is unlikely that China would oppose the creation of an oil-for-food program in Sudan.

C. *Why the Oil-for-Food Program for Darfur Would Work*

The U.N. implementation of an oil-for-food program in Sudan would be a crucially important step in achieving peace in Darfur. The U.N. must, however, avoid the recurrence of mistakes and build upon the successes of the Oil-for-Food Program in Iraq.

While a central aim of the Iraq Program was to deny Saddam Hussein the resources to re-arm and threaten his neighbors,¹⁶⁸ a parallel goal in Sudan must be to eliminate the government's ability to fund the Janjaweed militias and purchase arms that perpetuate the violence in Darfur.¹⁶⁹ By taking oil revenues out of the Khartoum regime's hands and carefully monitoring purchases of humanitarian goods, an oil-for-food program could be successful in depriving the Sudanese government of the means of committing further atrocities against innocent civilians.¹⁷⁰ The U.N. could also use many of the lessons it learned in providing humanitarian aid to Iraq to help the displaced people of Darfur.¹⁷¹ Although the distribution of aid in Iraq was far from perfect, the Oil-for-Food Program undoubtedly helped in

166. See *supra* notes 40-41 and accompanying text (explaining China's traditional policy of either abstaining or refusing to participate in certain Security Council votes).

167. See *supra* note 40 and accompanying text (recognizing that China often abstains to send message without alienating allies).

168. See *supra* note 106 and accompanying text (pointing out that one purpose of Oil-for-Food Program was to prevent development and production of weapons of mass destruction in Iraq).

169. See *supra* notes 24-29 and accompanying text (acknowledging Sudan's vast expenditure of oil revenues on weapons and operations of Janjaweed militias).

170. See *supra* notes 106-109 and accompanying text (noting success of Oil-for-Food Program in preventing Saddam Hussein from accessing weapons and dual-use technologies).

171. See *supra* notes 113-117 and accompanying text (listing examples of humanitarian aid that benefited people of Iraq during Oil-for-Food Program).

increasing the standard of living of the Iraqi people.¹⁷²

Specific characteristics of Sudan also support the proposition that it would be an easier place to administer an oil-for food program than in Iraq. Not only does Sudan's production of oil pale in comparison to Iraqi production at its peak,¹⁷³ but an oil-for-food program in Sudan would have a list of existing customers to which it could limit sales of Sudanese oil. In Iraq, an embargo was in place six years prior to the implementation of the program, so there was no existing sales procedure.¹⁷⁴ Therefore, the U.N. committee in charge of the program would not have the difficult task of investigating the legitimacy of oil purchasers in Sudan, as it should have done in Iraq.¹⁷⁵ A smaller group of purchasers would likely decrease the administrative burden on the committee and prevent Sudan from selling oil allocations for political support.

An oil-for-food program in Sudan would also not suffer from problems of smuggling because existing purchasers of Sudanese oil will still be able to purchase the oil, at a consistent price, after the imposition of the program.¹⁷⁶ As for the kick-back payments Iraq was able to collect on the awarding of contracts for humanitarian goods,¹⁷⁷ the monetary and criminal penalties that a number of nations have imposed as a result of the IIC investigation should go a long way towards discouraging companies and individuals from participating in such activi-

172. See *supra* notes 113-117 and accompanying text (recounting benefits of humanitarian aid among civilian population of Iraq).

173. While Iraq produced 3.5 million barrels of oil per day at its peak in 1977 and 2.8 million per day at the end of the Oil-for-Food Program in Iraq in 2003, Sudan has never produced more than 500,000 barrels per day. See Engdahl, *supra* note 16 (estimating Sudan's oil production at 500,000 barrels per day); David Ignatius, *Mending the Marriage With Saudi Arabia*, WASH. POST, July 29, 2003, at A17 (reporting that Iraq's pre-1991 production level was 3.5 million barrels per day, and that its estimated production capability is 6 million per day); Nicholas D. Kristof, Op-Ed., *After War, Let Iraqis Triumph*, N.Y. TIMES, Mar. 21, 2003, at A19 (reporting that in 2003, Iraqi oil production capacity dropped from 3.5 million barrels per day in 1977 to 2.8 million barrels per day).

174. See *supra* notes 76-78 and accompanying text (recounting U.N. Security Council's placement of embargo against Iraq in 1991).

175. See *supra* notes 89, 92-95 and accompanying text (discussing Iraq's requirement of "surcharge" payments on oil contracts and failure of 661 Committee to identify and investigate such practices).

176. See *supra* notes 98-103 and accompanying text (highlighting illicit oil smuggling that plagued Iraqi Oil-for-Food Program).

177. See *supra* note 91 and accompanying text (noting that Iraq collected approximately US\$1.58 billion on kickbacks from contracts for sale of humanitarian goods).

ties.¹⁷⁸ Nonetheless, the committee responsible for oversight must be diligent in examining contracts for possible kickbacks and disguised purchases of arms.

Finally, the imposition of an oil-for-food program would put significant pressure on Sudan to cooperate with the U.N. in a number of other important areas. The U.N. could use these sanctions as leverage to: (1) finally implement the deployment of a full A.U./U.N. hybrid peacekeeping force that would protect civilians in Darfur;¹⁷⁹ (2) force the disarmament of the Janjaweed militias;¹⁸⁰ (3) require cooperation with International Criminal Court investigations of crimes against humanity in Darfur;¹⁸¹ and (4) allow humanitarian aid workers full and unimpeded access to Darfur.¹⁸² Only after the U.N. achieves all of these objectives will it be possible for the international community to accomplish its goal of stabilizing the situation in Sudan and building a foundation for lasting peace.

CONCLUSION

Although the Oil-for-Food Program in Iraq will always be remembered for its tales of corruption and maladministration, it is important not to write off the creative ideas and good intentions behind the Program. As Justice Goldstone wrote in proposing an oil-for-food program in Sudan, "We should not let the perfect be the enemy of the good."¹⁸³ Despite its many failures, the Oil-for-Food Program was successful in achieving two of its main aims: preventing Saddam Hussein from reviving Iraq's development of weapons of mass destruction and improving the standard of living for the civilians of Iraq.

178. See *supra* notes 141-144 and accompanying text (describing fines and prison sentences that courts have handed out as a result of IIC investigation into Oil-for-Food Program in Iraq).

179. See *supra* note 2 (citing resolution approving deployment of A.U./U.N. force to Sudan).

180. See *supra* notes 28-29 and accompanying text (describing involvement of Sudanese government-supported Janjaweed militia in commission of human rights violations in Darfur).

181. See *supra* note 2 (citing resolution referring perpetrators of human rights abuses in Sudan to ICC).

182. See *supra* note 34 and accompanying text (discussing efforts of Sudanese government to obstruct international agencies from delivering humanitarian aid in Darfur).

183. Goldstone, *supra* note 7.

The implementation of an oil-for-food program in Sudan could be the step that finally forces the Khartoum regime to cooperate with the international community. The program's unique characteristics would likely make it acceptable to China and to humanitarians. The international community must act now to cut off Sudan's supply of arms until there is no longer a danger that it will facilitate further violations of international humanitarian law. The implementation of an oil-for-food program in Sudan could be just what the international community needs to turn the corner towards a peaceful solution to the ongoing conflict in Darfur.