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Human Rights First

Written Submission to the United Nations Security Council Committee Established Pursuant to Resolution 1591 (2005) Concerning the Sudan

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About Human Rights First

Human Rights First (HRF), founded in 1978 and formerly called the Lawyers Committee for Human Rights, is a non-profit, nonpartisan human rights research and advocacy organization based in New York and Washington, D.C. To maintain our independence, we accept no government funding.

HRF believes that building respect for human rights and the rule of law will help ensure the dignity to which every individual is entitled and will stem tyranny, extremism, intolerance, and violence. To that end, HRF works to improve the protection available under United States law to refugees fleeing persecution, and to promote the rule of law and respect for the Constitution in the United States, especially focusing on those whose rights are eroded in the name of national security. Outside the domestic arena, Human Rights First works to protect victims of mass human rights violations, victims of discrimination, and human rights advocates who are targeted for defending the rights of others.

Introduction

Thank you for inviting Human Rights First to address the Sanctions Committee today. We requested this meeting because we share the Committee's concern about violations of Security Council resolutions involving Sudan, in particular arms transfers into Darfur, and we believe that our information and analysis will help the Committee carry out the tasks assigned to it under Resolution 1591.

In seeking to develop specific and useful recommendations for reducing violence in Darfur, Human Rights First identified the United Nations arms embargo on Darfur, of which this Committee is the caretaker, as an important tool. If effectively enforced, the arms embargo could ameliorate both the situation on the ground and the status of political negotiations. Unfortunately, however, the embargo remains underused. To develop our recommendations for fuller use of the embargo, Human Rights First has exhaustively reviewed and analyzed publicly available information about potential embargo breaches, including documentation of those who supply weapons to known embargo violators. In addition, the organization has engaged in legal and field research on the arms embargo.

The imposition of the arms embargo, through U.N. Security Council Resolutions 1556 (2004) and 1591 (2005), demonstrated a clear international commitment to halting the supplies that allow violence to continue in Darfur. However, that commitment has not been borne out through the imposition of consequences on those who violate the embargo. Reports by the Panel of Experts and others have revealed that the embargo is frequently violated by all parties to the conflict. However, the presentation of such evidence has resulted in few punitive consequences for parties to the conflict and those responsible for these breaches of international law. By failing to take decisive action to enforce and strengthen the Darfur arms embargo, the Security Council is weakening its authority and sending a dangerous signal to embargo violators—both in Sudan and in other areas where embargoes are in effect—that they are above the law.

Human Rights First has concluded that imposition of the embargo has failed to fulfill the Security Council's intent to stem the flow of arms to Darfur. This statement surveys the scope of the violations to the embargo, including original documentation by Human Rights First, and proposes steps the Sanctions Committee and Security Council should take to enforce and strengthen the embargo—and thereby to bolster peace negotiations.

Violations of the Embargo

Human Rights First's research and analysis regarding the supply of arms to belligerents in Darfur complements and corroborates the five reports of the Sanctions Committee's own Panel of Experts. Those reports provide robust first-hand documentation of violations of the Darfur arms embargo committed by Sudanese rebel groups and their support networks as well

as by the Government of Sudan. Some of the most troubling embargo violations documented by the Panel include the movement of Sudanese Armed Forces (SAF) attack aircraft into and out of Darfur, the presence in Darfur of military vehicles built after the embargo was established, and the “leakage” of arms from regional government weapons stocks to rebels.¹

Sudanese Rebel Groups and the Government of Chad

Human Rights First conducted a research mission to Chad in October 2008 to investigate, among other things, the relationship between the government of Chad and Sudanese rebel groups. We spoke to a range of United Nations staff, aid workers, local NGO staff, embassy officials, Chadian government officials, Darfuri rebel group representatives, refugees, and EUFOR and MINURCAT personnel. Information conveyed in these interviews strongly supports charges that the Government of Chad not only allows Sudanese rebel groups—especially the Justice and Equality Movement (JEM) but also the Sudan Liberation Army (SLA) groups—free movement inside its borders, but also supplies them with arms and related materiel for their operations in Sudan.²

Darfuri refugees living in Oure Cassoni refugee camp described the extent of JEM’s operations in that area of Chad, as well as the accessibility of arms to these Sudanese rebels in that area of Chad. Oure Cassoni sits only a few kilometers from the Darfur border in an area that has been a flash point for cross border attacks between the governments of Chad and Sudan and their respective rebel proxies. JEM has reportedly recently established its operating headquarters in Am Juras, not far from Oure Cassoni, where new rebel recruits, some of them children, are taken for training and armed for battle in Sudan.³

One vivid indication of the cross-border arming of fighters—and of the fact that the conflict in Darfur exists not only inside that region’s borders—is the extent of JEM’s soldier recruitment activities in refugee camps in eastern Chad. JEM’s recruitment is reportedly widespread, carefully planned, and shameless in its violation of international humanitarian law.⁴ In some cases JEM officials are reportedly joined in their recruitment activities by officers in the Chadian National Army (ANT).⁵ One episode, which was recounted to Human Rights First by an eye-witness and confirmed to us by others while we were in Chad, illustrates the close relationship between JEM and the Chadian government.

On August 9, 2008, JEM representatives instructed all Am Nabak camp residents to attend a presentation by visitors the following day. On August 10, 2008, four JEM leaders arrived at Am Nabak with three ANT officers. They wore uniforms and carried weapons inside the camp. These officials declared that JEM would be launching another offensive on Khartoum

¹ See UN doc S/2008/647 (11 November 2008).

² Human Rights First interviews in Chad, October 2008.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

in two to three months, and that all male camp residents aged 14 years or older were required to undergo training from JEM to become a soldier. The Chadian officials asserted that anyone refusing to sign up would not be allowed to live in Chad.⁶ While the results of this recruitment effort are unclear, the incident underscores the cross-border and pervasive nature of the conflict at the same time that it demonstrates one way in which the ready availability of arms in the region fuels the conflict in Darfur.

Because JEM and SLA groups fall into the category of “non-governmental entities . . . operating in [the three states of] Darfur,” any supply of arms to them, wherever it happens, violates the Security Council’s arms embargo. To fulfill its mission, therefore, the Sanctions Committee should bear such activities in mind when considering options for enforcing and strengthening the embargo, even though the activities are not alleged to take place in Darfur itself.

Government of Sudan

The arms embargo imposed by Resolutions 1556 and 1591 is sophisticated in its formulation. By creating a two-pronged, complementary and indivisible system, the embargo offers significant opportunities for preventing the flow of arms into the Darfur region. The embargo prohibits Member States of the United Nations from selling or supplying arms and related materiel to any of the belligerents in Darfur, whether rebel groups, state-sponsored Janjaweed militias, or the Sudanese military. In addition, the embargo also prohibits the Government of Sudan from transferring arms and related materiel to the three states of Darfur without prior approval from the Sanctions Committee.⁷

However, as reported by the Panel of Experts, the Sudanese government has publicly stated its intention not to abide by the embargo.⁸ A Sudanese Armed Forces commander has also stated that the military rotates equipment within and between Darfur and the rest of Sudan.⁹ Human Rights First believes that these facts, combined with the possible indictment of President Omar al-Bashir on charges of genocide, war crimes, and crimes against humanity in Darfur, put Member States on notice that they should immediately suspend all arms sales to the Government of Sudan.

Neither Resolution 1556 nor Resolution 1591 explicitly addresses the legal status of the transfers to the Government of Sudan of arms that are not destined to be used in Darfur. After a comprehensive review of publicly accessible arms trade data, Human Rights First has identified over thirty countries that either exported arms directly to Sudan or manufactured

⁶ Ibid.

⁷ See UN Security Council resolutions 1556, paragraphs 3a.v. and 7. UN doc S/RES/1591 (2005).

⁸ See UN doc S/2006/795 (3 October 2006), paragraph 81.

⁹ See UN doc S/2008/647 (11 November 2008), paragraph 66.

arms that entered Sudan since the embargo took effect.¹⁰ That public data, which is voluntarily reported but not independently verified, showed that the People's Republic of China and the Russian Federation are the largest—but certainly not the only—suppliers of arms and related materiel to the Government of Sudan.¹¹ Data on arms transfers directly to rebel groups are more difficult to obtain, although among analysts of the region, it is widely believed that Chad and Libya are major suppliers of arms to the Darfur rebel groups.

An argument often used to support sales to the Government of Sudan—that the Security Council arms embargo does not prohibit arms transfers to Sudan as long as the arms sold are not destined to be used in Darfur—is legally suspect in this situation. By refusing to seek authorization for arms transfers within the country, the Government of Sudan fails to fulfill its own obligations under the embargo. This open violation of the embargo vitiates any promises supplying countries obtain from the Government of Sudan about the destination of weapons purchased. Moreover, allowing these transfers to continue undermines the purpose of Resolutions 1556 and 1591 and calls into question the credibility of the Security Council's commitment to preventing arms from reaching Darfur.

The Security Council resolutions are therefore meaningless when the Sanctions Committee does not exercise control over deciding which embargoed materials may enter Darfur. This effectively allows Member States to avoid the prohibition on selling arms directly to agents of the Sudanese government in Darfur by instead selling their arms to the authorities in Khartoum with full knowledge that the Sudanese government makes no effort not to transfer them into Darfur.

End-user (or usage) certificates and formal guarantees from the Government of Sudan are not, and cannot be, sufficient to validate arms sales to Khartoum. Under the embargo regime, the control over arms transfers within the territory of Sudan is to be implemented by the Sanctions Committee and not by the Government of Sudan. The presence of foreign manufactured arms in Darfur further illustrates the insufficiency of such measures in practice.

Improving Enforcement of the Arms Embargo

In the face of firm evidence of continuing violations and impunity for violators, it is time for the Committee to act. With so few steps taken to enforce the Darfur arms embargo, it is no surprise that some respect it only in the breach. Human Rights First proposes several concrete steps for this Committee to take or recommend without delay, in order to impose punitive consequences for violations of the law that the Security Council created.

¹⁰ "Arms Sales to Sudan, 2004-2006", Human Rights First, November 2008, available at <http://www.stoparmstosudan.org/pages.asp?id=35>.

¹¹ Ibid.

First, the Committee should recommend that the Security Council take immediate action to end unambiguous violations to the arms embargo. This includes ensuring the cessation of importation of attack aircraft, such as the Chinese A-5 Fantan, as well as accompanying spare parts and technical assistance for operating all attack aircraft. Likewise, the Committee should unanimously condemn the SAF's deployment of Mi-24 attack helicopters to Darfur, which have been used for air assaults there.

The Security Council should also ban military cargo flights to Darfur. To do so, the Sanctions Committee should recommend imposition of an aviation ban on the six companies that the Panel of Experts has documented as violating the arms embargo.¹² Such a move would at least temporarily impair the ability of the Government of Sudan to move arms and related materiel into and out of Darfur in violation of the embargo.

Second, the Committee should propose that the Security Council ensure that UNAMID has an arms embargo-monitoring cell in place within 60 days. UNAMID staff members have recently described to Human Rights First the task of arms monitoring as a "luxury item" that "might be implemented some day."¹³ However, the responsibility for monitoring arms was assigned to UNAMID when the Security Council established the peacekeeping operation; as a project critical to the protection of civilians and promotion of peace, that obligation may not plausibly be made secondary to any other peacekeeping responsibilities.¹⁴ Whether UNAMID's current avoidance of this responsibility is due to lack of capacity or lack of will, the absence of monitoring should be addressed immediately. The creation of an embargo cell within a peacekeeping mission is not without precedent. Such a measure led to "tangible improvements"¹⁵ in monitoring the Côte d'Ivoire arms embargo and is currently being used in the Democratic Republic of the Congo.

Third, the Committee should make full use of its powers under paragraph 3(a)(ii) of Resolution 1591. That is, it should submit to the Security Council a list of individuals on whom to place travel bans and asset freezes as consequences for impeding the peace process, committing violations of international humanitarian law and human rights law, violating the embargo, or bearing responsibility for military flights over Darfur. The Committee should endeavor to ensure that both agents of the Sudanese government and rebel groups are sanctioned, but the urgency of the situation demands immediate sanctioning of those individuals who have committed any of the acts described above.

¹² The six companies are Ababeel Aviation, AZZA Transport, Badr Airlines, Juba Air Cargo, Trans Attico and United Arabian Airlines. See UN doc S/2007/584 (3 October 2007).

¹³ Human Rights First interview with Department of Peacekeeping Operation staff, October 2008.

¹⁴ See Security Council Resolution 1769 paragraph 9. UN doc S/RES/1769 (31 July 2007).

¹⁵ See Cote d'Ivoire Group of Experts report at UN doc S/2006/964 (12 December 2006), paragraph 32.

Using Arms Suppliers' Leverage in Negotiations

Countries supplying arms to belligerents to the conflict in Darfur, whether directly or indirectly, are an important and underused resource for political negotiations. These countries are in a unique position to influence the warring parties, as those parties depend on the flow of arms to continue fighting. By taking steps to restrict their arms transfers from entering Darfur, suppliers may make more difficult the continuation of fighting—and, therefore, of inflicting damages that complicate peace negotiations. At the same time, increased restrictions will make fighting more costly, therefore making political solutions more attractive. Countries supplying arms to the parties to the conflict should use their particular leverage to strengthen the viability of political solutions to the conflict.

After being stalled for months, the political negotiations in Darfur are once again gaining momentum due to the work of the new joint chief mediator Djibril Bassolé and the Qatar peace initiative. Arms-supplying countries should help ensure that these negotiations move forward by placing a moratorium on all arms transfers to the region. Each Member State could take this action on its own decision, though doing so as a group—and particularly through a Security Council resolution—would be preferable for the powerful message it would send those who are not inclined to respect international law as set out by the Security Council. Such action would also allow past arms suppliers to underscore their commitment to Resolutions 1556 and 1591 by ensuring that their arms are not used to prolong the conflict and weaken political negotiations.

Some countries that supply arms to the Government of Sudan have, in the last year, used their influence to unblock political impasses over Darfur. For example, the Government of China played an important role in influencing the Government of Sudan to allow the establishment of UNAMID. This type of constructive engagement by arms suppliers must continue to be used in a variety of ways to help resolve the Darfur conflict.

Expanding the Arms Embargo

The Panel of Experts has called on the Security Council to consider widening the arms embargo beyond Darfur's borders to cover all of Sudan, Chad and northern parts of the Central African Republic (CAR). Human Rights First believes such an expansion is necessary not only to cut off the primary supply routes for trafficking weapons into Darfur, but also to recognize the interdependent nature of the conflicts occurring in each country.

The border that separates eastern Chad from Darfur runs hundreds of kilometers in length and is largely unpatrolled and lawless. Like Darfur, eastern Chad is awash with weapons. Human Rights First learned in N'Djemena that the Government of Chad estimates that for every

Chadian there are four weapons.¹⁶ This figure is so high as to be difficult to believe, but spending any time on the ground there makes clear that access to arms is unobstructed. As previously discussed, Sudanese rebel groups operate freely in Chad and receive arms from the Chadian government. This toxic combination creates the conditions through which Chad has distinguished itself as the back door for moving arms and related materiel illicitly into Darfur.

CAR is showing signs of being the newest back door for moving weapons into Darfur. Sources tell Human Rights First that northern CAR hosts a large arms market visited by rebels from throughout the region seeking to replenish their supplies. Like Chad, CAR's border with Darfur is largely unpatrolled. While the terrain is not as friendly for transiting weapons as eastern Chad, the lawlessness in the northern part of CAR nonetheless makes it a potentially attractive option for moving weapons into Darfur.

Should the Security Council widen the embargo to cover all of Sudan, Chad and northern parts of CAR, it must take steps to ensure that the expansion is not just symbolic. For example, the Security Council should give the proposed U.N. peacekeeping follow-on force that will likely replace EUFOR the power to enforce the embargo or, at a minimum, monitor violations to the embargo and report them to the Panel of Experts.

Conclusion

At stake here is principally the safety of civilians, humanitarians, and peacekeepers in Darfur, eastern Chad, and northern CAR. But the reputation of the United Nations Security Council and its mandates are also at stake. Leveraging the Darfur arms embargo to help rein in the violence and bring belligerents to the negotiating table has not been used by the Sanctions Committee. Human Rights First urges the Committee and Council to harness the full potential of the Darfur arms embargo as a tool to help mitigate the violence and establish the conditions for a peaceful resolution to the conflict. Moreover, Human Rights First encourages the Sanctions Committee to take the critical military and political step of halting all arms exports to Sudan and the region in order to help bring this conflict to a peaceful conclusion.

¹⁶ Human Rights First interview in Chad, October 2008.