

IMPROVEMENT ON THE COMMISSION? THE UN HUMAN RIGHTS COUNCIL'S INACTION ON DARFUR

*Rosa Freedman**

ABSTRACT

The UN Human Rights Council (Council) was established in 2006 to overcome the perceived politicisation of its predecessor, the UN Human Rights Commission. This article provides initial observations of its work, based on heretofore unpublished accounts of its proceedings. Using the example of Council inaction on Darfur, evidence is examined to confirm initial fears that the Council would fail to avoid the politicisation that undermined the Commission. The collective determination of politically allied states to shift attention away from Sudan and weaken any resolution that might be passed was the major cause of the Council's inaction on Darfur. This article examines a first-hand account of the Council's discussions, centring both on Sudan and its general debates, in order to ascertain the positions taken by the main regional groups. The article highlights the tactics used by supporters of the Sudanese government to ensure weakened action. Keywords: Darfur, Human Rights, Human Rights Council, International Human Rights, International Law, Sudan, United Nations

INTRODUCTION	83
I. BACKGROUND POSITIONS WITHIN THE POLITICAL AND REGIONAL	
ALLIANCES	84
A. The African Group as a Regional Group	85
B. The OIC as an Alliance	86
C. Other Groups and Alliances.....	87
II. REPORTS OF MANDATE HOLDERS AND GENERAL DISCUSSIONS	88
A. The Second Session	88
1. Sudan	90
2. The African Group	91
3. The OIC	91
4. The EU	92
5. Canada	92
6. Other States	93
B. The Third Session	94
1. Sudan	94

2.	The African Group	96
3.	The OIC	96
4.	The EU	97
5.	Canada	97
6.	Other States	97
C.	Special Session on Darfur.....	98
1.	Sudan	99
2.	The African Group	100
3.	The OIC	101
4.	The EU	102
5.	Canada	102
6.	Other States	103
D.	The Fourth Session	103
1.	Sudan	104
2.	The African Group	105
3.	The OIC	106
4.	The EU	106
5.	Canada	106
6.	Other States	107
E.	The Fifth Session	107
1.	Sudan	108
2.	The African Group	108
3.	The OIC	109
4.	The EU	109
5.	Canada	110
6.	Other States	110
F.	The Sixth Session	111
1.	Sudan	112
2.	The African Group	113
3.	The OIC	113
4.	The EU	114
5.	Canada	114
6.	Other States	115
G.	The Seventh Session.....	116
1.	Sudan	116
2.	The African Group	117
3.	The OIC	117
4.	The EU	117
5.	Canada	118
6.	Other States	118
III.	RESOLUTIONS AND DECISIONS OF THE COUNCIL REGARDING	
	DARFUR	118
A.	Decision on Darfur	119

2009]	<i>Improvement on the Commission?</i>	83
	B. Decision on the Situation of Human Rights in Darfur.....	120
	C. Resolution on the Follow-Up to Decision S-4/101.....	121
	D. Resolution on the Group of Experts	121
	E. Resolutions on the Mandate of the Special Rapporteur.....	122
	F. Resolution on Human Rights in Sudan.....	123
	IV. PATTERNS AND IMPACT OF REGIONAL ALLIANCES	123
	A. The African Group.....	124
	B. The OIC.....	125
	C. Other Regional Groups.....	126
	D. An Example of the Impact of Regional Alliances	127
	CONCLUSION.....	128

INTRODUCTION

The human rights crisis in Darfur, Sudan has been brought to the Human Rights Council's (the Council) attention at every session since it began work in 2006. In 2005, the United Nations Commission on Human Rights appointed Sima Samar as Special Rapporteur (SR) on Sudan.¹ Samar has reported on the situation to the Council since its creation. Despite her efforts, and those of individual states during various debates, no progress has been made. This article examines the implications of the Council's inaction and the extent to which initial predictions that the body would fail to overcome the politicisation that plagued its predecessor, the Human Rights Commission, have come true.²

Non-governmental organisations (NGOs) with a broad range of mandates – including such politically diverse groups as Human Rights Watch,³ Nord-Sud XXI,⁴ and UN Watch⁵ – documented the gross and

* Doctoral candidate, Faculty of Laws, Queen Mary University of London. LL.M, London 2006. LL.B. London 2005. Rosa Freedman has attended Human Rights Council sessions in Geneva. Sources for all uncited information is on file with the author.

¹ Situation of Human Rights in the Sudan, H.R.C. Res. 2005/82, U.N. Doc. E/CN.4/RES/2005/82 (Apr. 21, 2005). This mandate was subsequently extended by the U.N. Human Rights Council, Mandate of the Special Rapporteur on the Situation of Human Rights in the Sudan, H.R.C. Res. 6/35, U.N. Doc. A/HRC/RES/6/34 (Dec. 14, 2007).

² See generally Eric Heinze, *Even-handedness and the Politics of Human Rights*, 21 HARV. HUM. RTS. J. 7 (2008).

³ HUMAN RIGHTS WATCH, WORLD REPORT 2008: SUDAN-EVENTS OF 2007, available at <http://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/sudan17759.htm>.

⁴ Nord-Sud XXI, Nord-Sud Home page, <http://www.nordsud21.net/index.php> (follow "Darfur" hyperlink under "Activities" tab) <http://nordsud21.ch/Darfur.htm> (last visited Mar. 15, 2010).

⁵ UN Watch, UN Watch Action on Darfur, http://www.unwatch.org/site/c.bdKKISNqEmG/b.2607541/k.5D6E/UN_Watch_Action_on_Darfur/apps/nl/newsletter3.asp (last visited Mar. 15, 2010).

systemic violations perpetrated by all parties to the conflict in Darfur. The Council regularly discussed the situation in Darfur and passed resolutions calling for action.⁶ Qualified experts called for implementation of the Council's resolutions and recommendations. The situation on the ground nevertheless showed little improvement.

The Council's inaction resulted from regional alliances and factional infighting. The article begins by examining the regional and political ties that affected the Council's discussions, focusing on the two main groups at the Council that supported the Sudanese government – the African Group and the Organisation of the Islamic Conference (OIC). Individual states' comments during discussions are cited to illustrate the influence of those groups on other states, as well as their effect on the Council as a whole. Discussions from Council Sessions will be used to show the strength and breadth of concern about Darfur. Statements by members of the African Group and the OIC will be compared with those of Western States, and members of other regional groups. Council resolutions and decisions, alongside the discussions they generated, will be used to examine the effects of political tactics upon the weakening or blocking of Council intervention in the region.

I. BACKGROUND POSITIONS WITHIN THE POLITICAL AND REGIONAL ALLIANCES

Political alliances within the UN often result in tactical voting on the wording and passing of resolutions and official statements. At the Council, those alliances often dominate discussions on specific situations, such as the one in Darfur. Alliances are used, either expressly or tacitly, to coerce states from other regional groups into action or silence, undermining the Council's ability to intervene.

Alliances are highly influenced by membership allotments. African and Asian States hold thirteen seats each. Eastern European States hold six seats. Latin American and Caribbean States (GRULAC) hold eight seats. Western European and Other States⁷ hold seven seats.⁸ States often hold membership of more than one regional or political alliance. For example,

⁶ See, e.g., U.N. Doc. A/-HRC/-DEC/-2/-115; U.N. Doc. A/HRC/RES/4/8; U.N. Doc. A/HRC/RES/6/35; A/HRC/RES/6/34.

⁷ "Other States" refers to non-European, Western States, such as Canada. See U.N. Hum. Rts. Council, Membership by Regional Groups from 19 June 2007-18 June 2008, <http://www2.ohchr.org/english/bodies/hrcouncil/groups0708.htm>.

⁸ U.N. Hum. Rts. Council, Membership of the Human Rights Council 19 June 2009-18 June 2010 – By regional group, <http://www2.ohchr.org/english/bodies/hrcouncil/groups0610.htm>.

Egypt is a member of both the African Group and the OIC.⁹ Slovakia is a member of the Eastern European Group and the European Union.¹⁰

Alliances fundamentally structure debates in the Council. Discussions following expert reports and general debates on agenda items tend to begin with representatives of the main alliances stating a general position that is universal or predominant among its members. These statements are followed by pronouncements by individual Member States, expressly or tacitly referring back to the broader positions of one or more of the allied blocks. Concerned countries, non-Member States, and observers are given the opportunity to give statements where appropriate, which also often follow the trend of regional or political alliances.

However, members of different alliances followed crucially different patterns during discussions on Sudan. Individual states from the OIC, the Arab Group and the African Group tended to make statements, even where they all-but echoed those made by the Group's chair. The other main regional groups tended to allow their elected chair to speak on their behalf in discussions on Darfur unless the individual member wished to add something specific. Therefore, many discussions lacked balance due to the large amount of statements made by members of the African Group and the OIC, as compared with other states and their alliances. Before pinpointing specific arguments raised in individual sessions, it is crucial to examine general tendencies of the various blocks. Such an examination will allow the analysis in Section 2 to focus on blocks' and individual states' specific positions.

A. The African Group as a Regional Group

Representatives of the African Group (Group), followed by representatives of individual African States, generally supported the Sudanese government. They constantly insisted that Sudan was doing everything possible to curb human rights violations and bring perpetrators to justice. The Group's repeated expressions of solidarity with Sudan were accompanied by calls for international assistance. However, the Group's refusal to ascribe any state responsibility to Sudan hindered the Council's ability to take action.

Not only did the Group as a whole support Sudan at the Council, but the vast majority of its individual members took similar positions during discussions and votes, even to the point of expressing obviously untenable positions. In March 2007, for example, during a discussion about the

⁹ See generally Membership, *supra* text accompanying note 7. For rules on membership, see G.A. Res. 60/251, ¶¶ 7-9, U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

¹⁰ See generally Membership, *supra* text accompanying note 7.

Council-mandated Mission to Sudan, which the Sudanese government had blocked from entering the country, the Tunisian delegate stated, “Sudan continues to express its readiness to cooperate with Council.”¹¹

There were instances of African States breaking regional alliances, but they were rare and unpredictable. The only African States to condemn Sudan were those directly harmed by the conflict¹² and those with stronger democratic regimes, such as Botswana¹³ and Zambia.¹⁴

B. *The OIC as an Alliance*

The OIC is the largest alliance of states within the UN.¹⁵ It calls itself “the collective voice of the Muslim world.”¹⁶ In 2006, 17 Council States

¹¹ Tunisian delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 16, 2007).

¹² Chadian delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 13, 2006). For rules on convening of special sessions, see U.N. GAOR, Hum. Rts. Council, 5th Sess. General Assembly, ¶¶ 119-128, A/HRC/5/21 (Aug. 7, 2007).

¹³ According to the Human Rights Committee, for example, “The Committee notes with satisfaction the strong democratic culture of the State party as well as the establishing of universal basic education, and its considerable achievements in addressing the challenges posed by the HIV/AIDS pandemic.” See U.N. Hum. Rts. Comm., 92d Sess., *Concluding observations of the Human Rights Committee: Botswana*, ¶ 4, CCPR/C/BWA/CO/1 (Apr. 24, 2008). According to the Foreign and Commonwealth Office, “Botswana has a generally good human rights record, consistent with its reputation for democratic and constitutional governance.” Foreign and Commonwealth Office, Country Profile: Botswana, <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/botswana/> (follow “Politics” hyperlink, then scroll down to “Human Rights” section) (last visited Mar. 15, 2010).

¹⁴ According to the Human Rights Committee, for example, “The Committee welcomes the establishment . . . of the Zambian Human Rights Commission, with the mandate to promote and protect human rights.” See U.N. Hum. Rts. Comm., *Concluding observations of the Human Rights Committee: Zambia*, ¶ 4, CCPR/C/ZMB/CO/3/CRP.1 (July 23, 2007). According to the Foreign and Commonwealth Office, “Human rights are improving in Zambia. Although never particularly bad by regional standards, there were repressive policies associated with UNIP’s one-party rule, and in response to alleged attempts to overthrow both UNIP and MMD governments. President Mwanawasa has notably commuted the death sentences given to the 1997 coup plotters and indicated his opposition to judicial execution.” Foreign and Commonwealth Office, Country Profile: Zambia, <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/sub-saharan-africa/zambia> (follow “Politics” hyperlink, then scroll down to “Human Rights” section) (last visited Mar. 15, 2010).

¹⁵ There were 57 members in 2008 (21 Sub-Saharan African States, 12 Asian States, 18 Middle Eastern and North African States, 3 Eastern European and Caucasian States, 2 South American States, and 1 Permanent Observer Mission). See U.N. Organisation of the Islamic Conference, Permanent Missions of OIC Member States to the United Nations in New York, <http://www.oicun.org/categories/Mission/Members/> (last visited Mar. 15, 2010).

¹⁶ Organisation of the Islamic Conference, About OIC, http://www.oic-oci.org/oicnew/page_detail.asp?p_id=52 (last visited Mar. 15, 2010).

were OIC members. Three countries, Algeria, Saudi Arabia, and Azerbaijan, respectively, chaired the regional groups for Africa, Asia, and Eastern Europe. These OIC members almost invariably aligned themselves with the African Group's opinion on Sudan. Peggy Hicks, Global Advocacy Director of Human Rights Watch commented that, "the OIC's mantra has been that the council should work cooperatively with abusive governments rather than condemn them. Since states tend to fear the airing of their own dirty laundry, many have bought into this argument."¹⁷

Many OIC members made statements during almost all discussions in contrast, again, to members of other blocks who were less inclined to repeat previously-stated collective positions. When Sudan was brought to the Council's attention, the OIC, like the African Group, emphasized its collective position by using large numbers of similar statements by individual states. The size and geographical diversity of its membership gave the OIC significant weight in the Council when deploying this tactic. The impact of this alliance was especially apparent given the juxtaposition of Asian States belonging to the OIC, whose representatives gave regular statements supporting Sudan, and other members of the Asian Group, whose representatives often neither supported nor criticized the regime.

As will be examined in Section 3, members of the OIC often blocked, or significantly weakened, action from being taken on Sudan. The OIC used discussions on Darfur to raise unrelated issues, thus diverting time and focus away from the region.

C. Other Groups and Alliances

Latin American and Caribbean States (GRULAC) voiced the need to address the crisis in Sudan, but in inconsistent ways. During different debates, an individual state that previously expressed support for Sudan may subsequently be silent, or even criticize the regime. The GRULAC States also lacked uniformity in positions taken within any given debate. There were some exceptions within the region – countries that always supported Sudan – most notably Cuba. The only countries consistently condemning Sudan and the atrocities taking place in Darfur were those belonging to the Western Group, albeit with the EU taking a more moderate approach than states such as Canada and Australia.

A few states were undeterred by the OIC's tactics. Canada, the Netherlands, the United Kingdom, and Switzerland,¹⁸ among others, were

¹⁷ Peggy Hicks, *How to Put U.N. Rights Council Back on Track*, JEWISH DAILY FORWARD, Nov. 3, 2006, available at <http://www.forward.com/articles/7421/>.

¹⁸ Switzerland joined the United Nations in 2002, thus allowing it to become a member of UN bodies. See OHCHR, Human Rights by Country, <http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx> (last visited Mar. 15, 2010).

notable for both their condemnation of the situation in Darfur and their calls for action. Members of the Asian Group and GRULAC, and at times the EU, often remained silent or even deferred to the OIC's position in discussions, as they wished to appear neutral rather than offend the OIC. Hicks, perhaps unduly idealistic about the repercussions of states' positions in the Council, strongly criticized the docility of such states towards the OIC, stating that these countries should be aware that "if they side with the Pakistans and Algerias [chairs of the OIC and African Group, respectively] of the Council to block efforts to address situations like Darfur, their conduct in Geneva will be made known, and they will pay a price both back home and in their international reputation."¹⁹

II. REPORTS OF MANDATE HOLDERS AND GENERAL DISCUSSIONS

The disparity of opinions expressed by various members provides insight into why so little action was ultimately taken. This Section will examine comments made by the groups and states that played the strongest roles in the discussions: Sudan, Canada, and the Chairs of the African Group, the OIC and the EU. Any exceptional comments made by other states during these discussions will also be documented.

A. *The Second Session*

The Second Session²⁰ opened with the UN Secretary-General, Kofi Annan,²¹ and the High Commissioner for Human Rights, Louise Arbour, both drawing attention to Darfur. Arbour spoke about the deterioration of the humanitarian situation despite the Darfur Peace Agreement.²² She also

¹⁹ Hicks, *supra* note 17.

²⁰ U.N. Hum. Rts. Council 2d Sess. (Sept. 18-Oct. 6, 2006); U.N. Hum. Rts. Council, Resumed 2d Sess. (Nov. 27-29, 2006).

²¹ "You [the Council] were rightly concerned with the situation in the Middle East, I feel confident that you will draw the same attention to other situations. At this time, I feel I must draw your attention on issue on Darfur." Kofi Annan, Secretary-General, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 18, 2006); *see Id.*

²² Negotiated in Abuja, Nigeria in May 2006 and signed by the government and one faction of the opposition armed groups. Amnesty reported, "A Darfur Peace Agreement (DPA) was signed in May by the government and one faction of the Sudan Liberation Army (SLA) led by Minni Minawi. Other armed opposition groups, including the SLA and the Justice and Equality Movement, refused to sign. Most displaced people opposed the agreement, which was felt to lack guarantees for safe return and compensation. In demonstrations that turned into riots in many camps for the displaced, there were deaths, including of police officers, and numerous arrests. Some individuals and groups later signed the peace agreement. Under the DPA's terms, Minni Minawi was appointed Senior Assistant to the President." AMNESTY INTERNATIONAL REPORT 2007 243-44 (2007), available at <http://archive.amnesty.org/report2007/eng/Homepage>.

noted Sudan's refusal to allow UN peacekeeping troops into the region, and the insufficient mechanisms for dealing with human rights violations.²³ The inclusion of Darfur in these speeches set the tone for the session, with a number of mandate holders' reports raising concerns about this region. Walter Kalin, the Representative of the Secretary-General on human rights of internally displaced persons expressed "grave concerns" regarding Darfur, especially with regard to the internally displaced persons hoping to return to Darfur.²⁴ Yakin Ertuk, the Special Rapporteur on violence against women spoke of a lack of improvement²⁵ since the Comprehensive Peace Agreement (CPA) of 2005.²⁶ Jean Ziegler, the Special Rapporteur on the right to food spoke about the "millions of displaced people [in Western Sudan and Darfur who were] seriously and constantly undernourished."²⁷ Radhika Coomaraswamy, the Special Rapporteur on children in armed conflict expressed concern about violations of children's rights in Sudan, especially in regard to non-state actors closely associated with the state who recruit children.²⁸ The focus on Sudan by these mandate holders reveals the

²³ "In light of the continued failure or willingness [of the Sudanese government] to hold perpetrators to account, states must give support to the International Criminal Court and remind Sudan that its cooperation is not optional, it is a Chapter 7 decision of the Security Council." Louise Arbour, U.N. High Comm'r for Hum. Rts., Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 18, 2006); *see supra* note 20.

²⁴ Walter Kalin, Rep. of the Secretary-General on Human Rights of Internally Displaced Persons, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 19, 2006). These concerns are reflected by Amnesty, which reported:

On 16 August, without prior warning, bulldozers began to demolish homes in Dar al-Salam, an IDP settlement 43km south of Khartoum housing some 12,000 internally displaced persons. Many had fled droughts and famine in Darfur in the 1980s. Armed police and Special Forces used violence and tear gas against residents, and carried out arrests. Four people died, including a child, and many were injured.

See AMNESTY, *supra* note 22, at 245.

²⁵ Yakin Ertuk, Special Rapporteur on Violence Against Women, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 20, 2006). This can be evidenced in Amnesty's reporting, for example, "Janjawid accompanying the armed forces offensive in North Darfur in September captured five girls and women aged between 13 and 23 in the village of Tarmakera, south of Kulkul. They were reportedly raped and severely beaten before being released the following day." *See* AMNESTY, *supra* note 22, at 244.

²⁶ RELIEF WEB, THE COMPREHENSIVE PEACE AGREEMENT 2005 BETWEEN THE GOVERNMENT AND THE SUDAN PEOPLE'S LIBERATION ARMY (2005), <http://www.reliefweb.int/rwarchive/rwb.nsf/db900sid/EVIU-6AZBDB?OpenDocument>.

²⁷ Jean Ziegler, Special Rapporteur on the Right to Food, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 22, 2006).

²⁸ Radhika Coomaraswamy, Special Rapporteur on Children in Armed Conflict, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 29, 2006).

breadth of the crisis and its far-reaching human rights effects.

Due to the gravity of the situation, the Council was given a report about the region from Sima Samar, the UN-appointed Special Rapporteur on Sudan.²⁹ Her report covered three missions to Sudan during 2005 and 2006. Despite the Interim National Constitution³⁰ and the CPA creating a framework for human rights, Samar observed that “the government has failed in its responsibility to protect its civilians.”³¹ According to Samar, rape and sexual violence continued in Darfur and “The authorities have often failed to bring the perpetrators to justice.”³² Her recommendations included an investigation of human rights violations, Sudanese governmental cooperation with the International Criminal Court, protection of civilians by the African Union mission, and the international community’s support for human rights facilities and inclusive dialogue.³³

1. Sudan

Sudan always exercised its right of reply when Darfur was brought to the Council’s attention. The government argued that “the policy of the Sudanese government is to offer unlimited cooperation with institutions of the international community and with human rights institutions.”³⁴ Sudan also asked for assistance, stating, for example, “[W]e need support, especially financial support, from the international community. We would require 200 billion dollars to settle the problem in Darfur.”³⁵

The Sudanese delegate questioned the legitimacy of mandate holders’ reports, stating, “The Special Rapporteur said that regarding Sudan you relied on reliable information. What kind of information is that? Why does the [Sudanese] government not have this information?”³⁶ Sudan further questioned the motives of the international focus on Darfur:

²⁹ Sima Samar, Special Rapporteur on Sudan, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 27, 2006).

³⁰ A transitional legal framework entered into in July 2005, after the CPA ended decades of conflict between Khartoum and Southern Sudan. The Interim National Constitution changed the legal and governance system in Sudan, as well as providing a comprehensive Bill of Rights.

³¹ Samar, *supra* note 29.

³² *Id.*

³³ *Id.*

³⁴ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 27, 2006) (in response to Samar, Special Rapporteur on Sudan).

³⁵ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 18, 2006) (in response to Arbour, High Commissioner for Human Rights).

³⁶ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 20, 2006) (in response to Ertuk, Special Rapporteur on Violence Against Women).

2009]

Improvement on the Commission?

91

In Sudan there are many investigators from human rights institutions, especially in Darfur There are many reports on this within the UN framework I leave it to you to understand the real motivation of some States to continuously put pressure on Sudan This is just making the situation more difficult for the victims.³⁷

Sudan also reminded Member States of the Council's founding principles and the need for impartiality, stating, "The Human Rights Council should have no politicization . . . selectivity . . . or double standards."³⁸

2. The African Group

Algeria, on behalf of the African Group, pointed out that Samar's report had been written six months before the Peace Agreement of June 2006, after which improvements had occurred. Algeria felt Samar had unfairly overlooked this point. It should be noted, however, that Algeria's assertion that Sudan was dealing with, rather than contributing to, the human rights situation contradicted the 2007 Amnesty International Annual Reports. The Amnesty Reports revealed that merely a month prior to this 2006 Session, government-backed attacks had occurred in the region.³⁹ Algeria nevertheless insisted that Council action should be limited to material and institutional support for the Sudanese government, stating that "the international community at large, and donor countries in particular, [must] provide financial and technical assistance to Sudan."⁴⁰

3. The OIC

Pakistan, on behalf of the OIC, expressly associated itself with the African Group's statement on September 27, 2006, and reiterated that the groundwork had been built for the implementation of human rights in Darfur. Further, Pakistan "commend[ed] the Sudanese government for its efforts . . . and for its international cooperation."⁴¹ The OIC called on the international community to assist the Sudanese government, stating, "Justice and human rights should be absolute priorities We have to support

³⁷ Sudanese delegate, *supra* note 34.

³⁸ *Id.*

³⁹ "In August government forces launched a major offensive in North Darfur and Jebel Marra, which was accompanied by Janjawid raids on villages." AMNESTY, *supra* note 22, at 242.

⁴⁰ Algerian delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 27, 2006) (in response to Samar, Special Rapporteur on Sudan).

⁴¹ Pakistani delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 27, 2006) (in response to Samar, Special Rapporteur on Sudan).

this . . . to strengthen the Sudanese government . . . and provide moral support and technical assistance.”⁴² The OIC’s support for the Sudanese government’s efforts⁴³ can be contrasted with Amnesty International’s reports of government offensives at this time.⁴⁴

4. The EU

The EU’s position was markedly different from the African Group and the OIC, especially in how it viewed the Sudanese government’s role in the conflict. For example, the EU stated that it was “alarmed by the new fighting in Darfur; especially the systematic bombings of villages.” The EU representative added that “it is the responsibility of the government to protect its own citizens and to hold perpetrators accountable Do not forget the lessons learned in Rwanda.”⁴⁵

Finland expressed a similar position when, speaking on behalf of the EU, it stated its “strong support for Ms. Sima Samar’s mandate,” and asked for her opinion on the best way to protect civilians.⁴⁶ Finland noted Samar’s warning that further deterioration would be likely if steps were not taken, and expressed the view that “these fears have become reality.”⁴⁷ The EU emphasized that “the Human Rights Council cannot remain silent about the killings and violations in Darfur.”⁴⁸

5. Canada

While Canada acknowledged the efforts of Sudan’s government, it spoke at greater length of the increase in violence and the need for international intervention, for example:

We are deeply concerned about the situation in Sudan . . . some

⁴² *Id.*

⁴³ “The Government does its part to achieve reconciliation It is a nightmare to disarm people in Darfur because there are so many small arms Sudan also cooperates with the Security Council All parties must come to the negotiation table like the Special Rapporteur suggests.” Pakistani delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 27, 2006) (in response to Samar, Special Rapporteur on Sudan).

⁴⁴ “After a massive troop build-up in Darfur in August, the government launched an offensive against areas controlled by those groups in North Darfur and Jebel Marra. Government aircraft indiscriminately or directly bombed civilians.” AMNESTY, *supra* note 22, at 244.

⁴⁵ Finnish delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 18, 2006) (in response to the High Comm’r).

⁴⁶ Finnish delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 27, 2006) (in response to Samar, Special Rapporteur on Sudan).

⁴⁷ *Id.*

⁴⁸ *Id.*

2009]

Improvement on the Commission?

93

two million people have been displaced We welcome the efforts of the UN, the EU and the government of Sudan Despite the Peace Agreement, there is more and more violence, also towards aid workers. We call on all parties to immediately cease violence towards civilians and aid workers and to enable the UN mission in Darfur.⁴⁹

Canada questioned what the most effective way to provide assistance to the civilians in Darfur might be. Canada asked, for example, whether the High Commissioner thought that “monitoring the situation [in Darfur] makes a difference?” Further, Canada asked whether “there [was] anything the Council [could] do to assist . . . in this regard?”⁵⁰

Canada voiced concerns about protection of women in the region. The representative stated that “Canada sees that there is an increase in violence, despite of the peace agreement Internally displaced women are particularly vulnerable Sudanese police failed to act with due diligence.”⁵¹ Canada asked Samar “how . . . the OHCHR and international community [could] assist Sudan to protect women?”⁵²

6. Other States

While many states spoke about Sudan, China’s comments on the situation were unique. China spoke of the challenges presented by poverty, which, in its opinion, significantly contributed to the human rights situation within Sudan.⁵³ After making this statement, however, China went on to praise the government’s “efforts to protect and promote human rights.”⁵⁴

It is also interesting to note that while members of GRULAC had remained somewhat passive during the discussions on Sudan, several of these same states criticized the Council for not making any substantive decisions at this Session – especially in relation to Darfur – such as Uruguay, which pointed out that “any gap on substantive issues is a lack of

⁴⁹ Joint statement on behalf of Canada, Australia and New Zealand, Remarks at the U.N. Hum. Rts. Council 2d. Sess. (Sept. 27, 2006) (in response to Samar, Special Rapporteur on Sudan).

⁵⁰ Canadian delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 18, 2006) (in response to the High Comm’r).

⁵¹ Canadian delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 27, 2006) (in response to Samar, Special Rapporteur on Sudan).

⁵² *Id.*

⁵³ “Sudan is . . . struggling with poverty and diseases. The Council should take into account the special difficulties which the government of Sudan faces.” Chinese delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 27, 2006) (in response to Samar, Special Rapporteur on Sudan).

⁵⁴ *Id.*

protection for victims.”⁵⁵

B. *The Third Session*

The Third Session⁵⁶ opened with the High Commissioner’s overview of missions. This overview spoke of the crisis in Darfur, noting that it had “spilled over”⁵⁷ into Chad and Central African Republic.⁵⁸ In addition, the High Commissioner noted that attacks on villages, killings, displacement, and rape had continued⁵⁹ in Darfur with up to two million people now displaced, alongside other “horrific levels of violations.”⁶⁰ OHCHR also documented attacks by government-sponsored militia.⁶¹ The High Commissioner reported that up to four million people were in need of aid, urging the international community to ensure cessation of human rights violations.⁶²

This Session heard calls – primarily from Western and GRULAC States – for the convening of a Special Session on Darfur.⁶³ It was later announced that the Special Session on Darfur would occur immediately after the regular Session.⁶⁴ Discussions focused on the need for the Special Session and the way it would be conducted.

1. Sudan

Sudan’s response to the High Commissioner’s report followed similar

⁵⁵ Uruguay delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Oct. 6, 2006) (general discussion on other issues, initiatives, and decisions).

⁵⁶ The Third Session took place from Nov. 29-Dec. 8, 2006. Notes on file with author.

⁵⁷ Louise Arbour, U.N. High Comm’r for Hum. Rts., Remarks at the U.N. Hum. Rts. Council 3d Sess. (Nov. 29, 2006).

⁵⁸ “Attacks across the border resumed in October, in which some 500 civilians were unlawfully killed, many more were raped, thousands were driven from their homes, and villages were destroyed.” AMNESTY, *supra* note 22, at 244.

⁵⁹ Amnesty reported, “In November at least 50 civilians were killed, including 21 children under 10, when Janjawid attacked eight villages and an IDP camp in Jebel Moon in West Darfur. AMIS forces arrived the day after the attack. The Governor of West Darfur promised an inquiry but no findings had been made public by the end of 2006.” *See, e.g., Id.*

⁶⁰ “The Chief Prosecutor said [at this time] that the office had documented killings and massacres and there is a lot of information indicating deaths, destruction of food stocks and livestock which has deprived citizens of their means of survival.” Louise Arbour, U.N. High Comm’r for Hum. Rts., Remarks at the U.N. Hum. Rts. Council 3d Sess. (Nov. 29, 2006).

⁶¹ The Third Session, *supra* note 56.

⁶² *Id.*

⁶³ These states include: The Netherlands, Ecuador, Poland, Australia, Chile, Sweden, and Norway.

⁶⁴ Luis Alfonso de Alba, President of the Council, Remarks at the U.N. Hum. Rts. Council 3d Sess. (Nov. 30, 2006).

patterns to its comments in the previous Session. Sudan alleged that there was an “intentional campaign to offer false information on the situation,”⁶⁵ and that the “Resolution of the Council was based on false information.”⁶⁶ Sudan specifically pointed to “repeated attempts to spread false information in regard to rape,” noting that “it was said that dozens of cases took place . . . [and that the Sudanese government] proved that rumours spread by some NGOs [were] not true.”⁶⁷ Sudan then invited “the High Commissioner and the OHCHR to come to Darfur to see what the situation look[ed] like” on the ground.⁶⁸

During discussions regarding convening a Special Session on Darfur, Sudan again alleged that it was being singled out and treated unfairly. For example, Sudan stated that “there are violations in many parts of the world . . . the question of Darfur is different from other situations, because it is highly and heavily politicized . . . we were not able to change this.”⁶⁹

Sudan attempted to present a positive image by assuring the Council that the “[peace] agreement has led to very positive developments,”⁷⁰ and asserting that, “those responsible [for attacks] are those who have not signed the peace agreement.”⁷¹ Sudan again revealed its ties with the African Union, stating:

The African Union has stated, and it is the most credible, that the security situation has improved[,] . . . [there have been] improved levels of nutrition[,] . . . internally displaced persons have better access to water than others in Darfur[,] . . . [there has been] improvement in the rates of child deaths . . . [and there has been] tribal reconciliation.⁷²

Yet this information was in direct contradiction to independent NGO reports from this time.⁷³

⁶⁵ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 3d. Sess. (Nov. 29, 2006) (in response to the High Comm’r).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 3d. Sess. (Dec. 1, 2006) (general discussion on other issues).

⁷⁰ *Id.*

⁷¹ Sudanese delegate, *supra* note 65.

⁷² *Id.*

⁷³ Amnesty reported that “The Gereida region was insecure throughout 2006, with scores of villages destroyed in attacks by Janjawid or other armed groups. Some 80,000 people fled the camp for Internally Displaced Persons (IDP) in Gereida after fighting between forces of the SLA Minawi faction and the Justice and Equality Movement in October.” *See, e.g.*, AMNESTY, *supra* note 22, at 244.

2. The African Group

Following the High Commissioner's speech, the sole focus of the African Group's statement was to complain that five paragraphs of the aforementioned speech had been dedicated to Darfur, as compared with one paragraph on Iraq.⁷⁴ The High Commissioner was accused of bias and selectivity,⁷⁵ and the worsening of the Sudanese crisis was blamed on the "politicisation" of the situation. Algeria, on behalf of the African Group, asserted that the Sudanese government was cooperating with the ICC, and that security was improving in the region – developments which Algeria contended had yet to be recognized by the Council or the OHCHR. The African Group alleged that the focus on Darfur was unfair⁷⁶ and reflected bias against the Sudanese government.⁷⁷

The African Group and its members remained mostly silent during the calls for a Special Session on Darfur. However, Algeria strongly opposed Canada's proposals regarding the Special Session, and alleged that strict procedural rules would hinder the Council's ability to address substantive issues in a flexible manner. Algeria went on to state, "[T]he Council must make sure that we do replicate the model of the three previous sessions . . . [to] avoid the impression that there is selectivity, politicization and a . . . desire to attack a particular State that is a member of the African Group."⁷⁸

3. The OIC

The OIC and its individual members also remained silent during both the discussion of the High Commissioner's report and the calls for a Special Session. This was at least partially due to the High Commissioner's speech mentioning the situation in the Occupied Palestinian Territories, which subsequently became the focus of almost all OIC members' statements.⁷⁹

⁷⁴ The Third Session, *supra* note 56.

⁷⁵ In fact, the High Commissioner said in her response that the reason for doing so was due to the situation in Iraq having been the subject of 8 reports between 2004-2006. This was a direct result of the Human Rights Office within the U.N. UN Assistance Mission in Iraq being established in 2004. For reports, see United Nations Human Rights: Office of the High Comm'r for Hum. Rts., UNAMI Hum. Rts Reports, <http://www.ohchr.org/EN/Countries/MENARegion/Pages/UNAMIHRReports.aspx> (last visited Mar. 15, 2010).

⁷⁶ "The meeting on the 12th of November welcomed information that the security situation in Sudan is improving . . . encouraged by outcome of high level consultation on the 16th of November." Algerian delegate, Remarks at the U.N. Hum. Rts. Council 3d. Sess. (Nov. 29, 2006) (in response to the High Comm'r).

⁷⁷ "The alleged links between the government and the militias referred to by the High Commissioner have yet to be documented in an objective way." *Id.*

⁷⁸ Algerian delegate, Organisational Meeting, Dec. 7, 2006.

⁷⁹ *See, e.g.*, the delegates of Pakistan, Morocco, Bahrain, Bangladesh, Tunisia, and others, Hum. Rts. Council, 3d. Sess. (Nov. 29, 2006).

2009]

Improvement on the Commission?

97

4. The EU

Finland spoke on behalf of the EU, condemning the situation in Darfur and calling on the Council to convene a Special Session and take further action. It declared:

Acts of violence against vulnerable groups in Darfur, especially against children, must stop. Ethnically targeted violence against women and children, especially against internally displaced persons, must stop . . . [and the Council must] exercise responsibility to adequately address the situation in Darfur.⁸⁰

The EU did not explicitly criticize the Sudanese government, although some of its members did so in their individual statements.⁸¹

5. Canada

Canada argued that setting procedural rules would enable the Special Session to be as effective as possible. It suggested that four working days should pass between the end of the regular Session and the beginning of the Special Session, thus ensuring adequate preparation time for all delegations. Canada asked the OHCHR to provide background information on Darfur from a variety of different UN sources. After these proposals were opposed by a number of states, Canada explained that its suggestions would merely be guidelines in terms of ground rules.⁸² Canada expressed the hope that the Council's work be directed towards making changes on the ground, and that it should not become a political chamber.

6. Other States

During the discussions on November 29th, the Council was urged by a number of states not to focus all of its attention on one region alone. Australia reiterated that "there are more situations than just the Middle East that have to be addressed [by the Council]."⁸³ The United Kingdom called

⁸⁰ Finnish delegate, Remarks at the U.N. Hum. Rts. Council 3d Sess. (Dec. 1, 2006) (general discussion on other issues).

⁸¹ See, e.g., "[e]ven if all parties are guilty of serious breaches of international law, responsibility lies with the government." Swedish delegate, Remarks at the U.N. Hum. Rts. Council 3d Sess. (Nov. 29, 2006) (in response to the High Comm'r).

⁸² See Algerian delegate, Remarks at the U.N. Hum. Rts. Council 3d Sess. (Nov. 30, 2006) (discussion regarding convening a Special Session on Darfur, including Algeria's objections; Cuba opposed Canada's proposal, arguing that the session was of such urgency that it could not wait for another 4 working days to pass; The Philippines said that the 9 proposed procedural points were excessive; Brazil concurred, saying that such a "heavy instrument" was unnecessary).

⁸³ Australian delegate, Remarks at the U.N. Hum. Rts. Council 3d Sess. (Nov. 29, 2006)

for the Council to give the Darfur crisis as much attention as the Council had devoted to the Middle East. Chile also called on the Council to “not forget that human rights are universal.”⁸⁴

C. *Special Session on Darfur*

The Special Session on Darfur⁸⁵ took place over two days, with a general discussion on the opening day of the Session, followed by NGO statements and a vote on the Resolution on the second day.⁸⁶ The Session opened with a video address by the Secretary-General⁸⁷ and a speech by the High Commissioner,⁸⁸ both of which deplored the conditions in Darfur and called on the Council to send a clear message to the victims that change would occur. Representatives of a number of agencies delivered statements, including Jan Egeland, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator.⁸⁹ Egeland accused the government of Sudan of “allowing more freedom to those committing atrocities than those there to protect.”⁹⁰

NGO contributions at the Special Session followed similar patterns to those of the regional alliances.⁹¹ Several elements of UNICEF’s intervention report directly contradicted claims made by Sudan at the Session, especially with regard to malnutrition, food insecurity, and violence against women and children.⁹² Human Rights Watch spoke about the failures of the government of Sudan, accusing it of arming the militias and denying the factual records on the ground.⁹³ Amnesty International⁹⁴ read

(in response to the High Comm’r).

⁸⁴ Chilean delegate, Remarks at the U.N. Hum. Rts. Council 3d. Sess. (Nov. 29, 2006) (in response to the High Comm’r).

⁸⁵ The Special Session on Darfur took place from December 12-13, 2006. Notes on file with author.

⁸⁶ See section 3.2, *supra*.

⁸⁷ Kofi Anan, Secretary-General, Address to the Hum. Rts. Council 4th Special Sess., (Dec. 12, 2006).

⁸⁸ See Press Release, UNHCR, Address by Ms. Louise Arbour, U.N. High Comm’r for Hum. Rts., on the occasion of the 4th Special Sess. of the Hum. Rts. Council (Dec. 12, 2006), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=957&LangID=E>.

⁸⁹ See, e.g., *id.*

⁹⁰ Written statement of Jan Egeland, read by the representative of OCHA, 4th Special Sess. (Dec. 12, 2006).

⁹¹ NGO statements were given on December 13, 2006.

⁹² UNICEF statement, 4th Spec. Sess. (Dec. Special Session, December 12, 2006); Press Release, UNHCR, *supra* note 88.

⁹³ See generally, *Crisis in Darfur*, HUM. RTS. WATCH, Apr. 25, 2008, <http://www.hrw.org/en/news/2008/04/25/q-crisis-darfur>.

⁹⁴ See generally, *Human Rights in Republic of Sudan*, AMNESTY INTERNATIONAL, <http://>

testimony sent from an individual in Darfur, while Nord Sud XXI⁹⁵ brought a Darfuri as their speaker, and criticised the OIC for denying the facts of Sudan's participation in the ongoing violations. The Lutheran World Federation⁹⁶ made neutral comments and did not criticize Sudan, while the Union des Juristes Arabes⁹⁷ and Tupaj Amaru⁹⁸ moved the focus away from Darfur and onto Israel,⁹⁹ bearing striking similarities to tactics used by the OIC.¹⁰⁰

1. Sudan

Sudan's comments¹⁰¹ were divided into three categories: its efforts to curb human rights violations and calls for assistance to continue such efforts, the inaccuracy of reporting on Darfur, and the alleged bias and politicisation against the government.

www.amnesty.org/en/region/africa/east-africa/sudan (last visited Mar. 15, 2010).

⁹⁵ Nord Sud XXI is an NGO which "strives to support the work of the United Nations in the fields of human rights and development by providing a voice for concerns of individuals in the southern hemisphere" and is strongly anti-war. Its founders include Mr. Ahmed Ben Bella, the first President of Algeria, Mr. Nelson Mandela, the first President of South Africa after apartheid, and Mr. Ramsey Clark, a former US Attorney General and leading human rights lawyer. *See generally*, Nord-Sud XXI, About Us: List of Founders, <http://www.nordsud21.net/index.php> (select "About Us" hyperlink, then select "List of Founders" hyperlink) (last visited Mar. 15, 2010).

⁹⁶ The Lutheran World Federation provides relief and education in developing countries. *See generally*, The Lutheran World Federation, Homepage, <http://www.lutheranworld.org/> (last visited Mar. 15, 2010).

⁹⁷ "The Union of Arab Jurists, founded in 1975, is an international organization that aims to bring together associations of practicing lawyers and other members of the legal community in the Arab world to promote the rule of law." *See generally*, Arab Inter-Parliamentary Union, Homepage, <http://www.arab-ipu.org/english/> (last visited Mar. 15, 2010).

⁹⁸ Tupaj Amaru is an NGO that advocates for the rights of indigenous populations of the Americas known for its anti-West stance. It had its consultative status suspended for a year in 2004 when at the "fifty-ninth session of the Commission on Human Rights in 2003, two representatives of the organization had rushed towards [USA's] delegation carrying a large cylindrical object, had unfurled a banner and had chanted anti-American slogans." *See generally*, Tupaj Amaru, Homepage, http://www.pusinsuyu.com/english/html/tupaj_amaru_english.html (last visited Mar. 15, 2010).

⁹⁹ Union des Juristes Arabes suggested that international interests in Darfur were due to oil, minerals and colonial intentions, and said that the West did not really want democracy because "it responded to democracy in Palestine with a siege against the Palestinian people." Tupaj Amaru said that the solution to the crisis in Darfur required the political will of the government of Iran – which gives some indication of their desire to echo Iran's focus on Israel at this Session – and that Western powers were solely responsible for the conflict in Darfur. Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

¹⁰⁰ *See sec. 4.2, infra*, especially the contributions of Iran and Palestine.

¹⁰¹ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

Sudan asserted that the conflict in Darfur centered around “tribal struggles” that the “government [was] aware of and settling through agreements,”¹⁰² citing numerous statistics, many of which it claimed had been documented by the African Union. Further, the government contended that rebel groups that had not signed the Darfur Peace Agreement were committing the atrocities, such as recruiting children, raping women, and mass killings.

Sudan repeatedly alleged that the information presented to the Council and in the Western media was inaccurate. Sudan accused Western states of attempting “to undermine the dignity and sovereignty of weaker states.”¹⁰³ It questioned the motives of some states who called for the Special Session, alleging that this was a tactic to divert attention away from atrocities being committed by the West in Iraq and elsewhere.¹⁰⁴ Sudan emphasized its regional alliances, stating that “we have chosen to belong to the African community, the Arab community, and the Islamic community.”¹⁰⁵ Having done so, Sudan expressed the differences it saw between Western and other States, stating, “[W]e distinguish between genuine concerns for human rights, and ideological and political drives pushed by countries and organisations that control power, wealth and [the] media.”¹⁰⁶

In addition to alleging that the West and the media were partial and unfair, Sudan accused the High Commissioner of being “clearly biased,” citing her focus on Sudan at the 3rd Session as evidence. Sudan further added that “the High Commissioner has adopted an unprofessional position . . . [in that she] is partial to opinions of certain countries.”¹⁰⁷

2. The African Group

Algeria, on behalf of the African Group, supported Sudan’s assertions. It criticized the Western media for trying to “undermine the sovereignty of an African government.”¹⁰⁸ Algeria later emphasized this position by stating, “[W]e are gathered [at the Special Session] to make an objective

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ “[The West] seeks to divert attention from cities air bombed where every morning more than 400 people die. Also attempts to divert attention from agony of people under occupation, detainees under secret detention, here in Europe, without anyone doing anything about it.” Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

¹⁰⁵ Sudanese delegate, *supra* note 101.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Algerian delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

2009]

Improvement on the Commission?

101

diagnosis for an appropriate road map. We must be driven by facts obtained on the ground, not simply by media-driven interpretations as a heavy-handed response aimed at naming and shaming an African government.”¹⁰⁹

Algeria also suggested that the Special Session was being used for political purposes, including diverting attention away from Iraq. The Algerian representative stated, “[T]oday, [the human rights situation in Africa] pales in comparison with Iraq [where there are] hundreds of thousands of deaths.”¹¹⁰

The African Union alleged that facts had been misrepresented to the Council, stating:

[There have been] far-reaching propaganda campaigns where human rights situations are politicised Thus, one major first-world NGO calls this an “apocalyptic conflict where an Arab government with its militia attacks non-Arab tribes” [However] the Chairman of Commission of the African Union says that the situation is “improving slightly in some parts while deteriorating in others.”¹¹¹

Algeria spoke of the need to “find out first-hand what the facts really are” in order to develop innovative solutions rather than “just maintaining the status quo,” which the African Group stressed was “not an option.”¹¹²

3. The OIC

Pakistan, on behalf of the OIC, commended the Sudanese government for its cooperation, its efforts in resolving the conflict, and the information provided to the Special Session, even asserting that “no government has been more forthcoming than Sudan.”¹¹³ Pakistan said that other parties to the conflict bore responsibility for the violence and atrocities, and called for further funds and assistance in the region. The OIC as a whole called for the outcomes of the Session to “not be one-sided” against the Sudanese government.¹¹⁴

Further, the OIC’s comments shifted the focus from Darfur and onto the Middle East. Pakistan criticised Kofi Annan, alleging that his call for the Council to address problems outside of the Middle East was a “tit for tat”

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Pakistani delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

¹¹⁴ *Id.*

approach.¹¹⁵ Pakistan enquired why the Secretary-General had not spoken at the previous Special Sessions, at one point asking, “Were the situations in Gaza or Lebanon not worthy of a message from the Secretary-General?”¹¹⁶

4. The EU

The EU reiterated points already presented to the Council. It spoke of the “grave crisis” in Darfur, the “magnitude [of which] is profoundly shocking,” citing numbers such as “more than 200,000 dead” and “2 million who have left their homes.”¹¹⁷ Finland, speaking on behalf of the EU, called on the Council to act, asking that “an assessment mission . . . be sent to Darfur . . . including the Special Rapporteur . . . [and that] the mission should build on OHCHR experience, and recommendations should be given to Sudan on how to implement proposals.”¹¹⁸

The EU did not explicitly criticize Sudan, but did express the need for the Sudanese government to take action to change the situation in Darfur. It emphasized that “the cooperation of the government of Sudan is essential We call on Sudan to cooperate with follow-up mechanisms We appeal to all of you to cooperate [on behalf of] the people of Darfur.”¹¹⁹

5. Canada

Canada emphasized why the Special Session had been convened, noting that “it is high time that the Council acts in accordance with its mandate” of promoting and protecting human rights.¹²⁰ It said of the international community’s duties:

We are here to signal that we haven’t forgotten the people of Darfur . . . [and] to show that the international community is ready to act [T]he international community must do all that it can to provide protection . . . [and] the international community must do the monitoring, [and] provide technical assistance for human rights education.¹²¹

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Finnish delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec.12, 2006).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Canadian delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec.12, 2006).

¹²¹ *Id.*

When speaking about solutions for the situation, Canada expressed “support [for] the decision for an independent human rights assessment mission with suitable expertise to provide recommendations on practical short-term actions to improve the situation.”¹²² Canada further stated, “[We are here] to remind the government of Sudan that it has primary responsibility to protect this region.”¹²³ Finally, Canada called on “all parties [to the Special Session] to implement recommendations . . . and resolutions.”¹²⁴

6. Other States

Zambia, once again, took a different position from the African Group, speaking out forcefully against “burying our heads in the ground.”¹²⁵ It accused other African governments of previously taking an ostrich approach to the atrocities in Rwanda, and of doing so again in Darfur. Zambia criticised other African states for being quick to call for UN action outside of Africa, but being much slower to respond to problems occurring within their continent. On the other hand, despite its democratic tendencies, South Africa’s statement neither criticized Sudan nor departed from the African Group’s sentiments.

The Netherlands spoke particularly strongly on the issue, repeatedly blaming the Sudanese government for the violations in Darfur, as well as accusing it of lying to the Council.¹²⁶ Some GRULAC¹²⁷ states spoke strongly in support of the High Commissioner, especially after many of the OIC countries had strongly criticised her. Additionally, Armenia opined that doubting UN sources’ credibility was akin to “questioning the integrity of the UN.”¹²⁸

D. *The Fourth Session*

Despite the Fourth Session’s primary focus on institution building,¹²⁹ Darfur was extensively discussed during the High Level Segment, and raised

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Zambian delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

¹²⁶ Dutch delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

¹²⁷ *See, e.g.*, Uruguayan and Argentine delegates, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

¹²⁸ Armenian delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

¹²⁹ The Fourth Session took place from March 12-30, 2007. Notes on file with author.

as an example of non-implementation of Council Decisions.¹³⁰ Darfur was also spoken about in response to reports by Walter Kalin, the Representative of the Secretary-General on Internally Displaced Persons,¹³¹ and Yakin Erturk, the Council-appointed Special Rapporteur on Violence against Women,¹³² as well as in the High Commissioner's report, which noted increased levels of violence.¹³³ States, NGOs, and agencies called for increased international presence, and stressed the necessity of such action in order for civilians to be best protected.

Similar themes were apparent in the report of the Mission to Sudan that spoke of the "pattern of counter insurgency by the government and the Janjawid militia,"¹³⁴ and described grave and systematic human rights abuses. The report noted, "The region is a stranger to the rule of law" and that as the "conflict continues, abuse feeds on abuse."¹³⁵ It strongly condemned human rights violations, calling on the international community to "take urgent action to ensure effective protection [of civilians]."¹³⁶ Its recommendations included the deployment of a UN peacekeeping force, independent monitoring of the situation, and international prosecution of Sudanese war criminals – none of which had previously been implemented effectively.

1. Sudan

Sudan repeated its usual pattern in responding to the issues raised at the 4th session. It again spoke of its willingness and efforts to protect human rights, stating, "We showed unprecedented cooperation and flexibility, and believed that would be sufficient to help the international community help us to achieve peace."¹³⁷ Sudan made these comments in spite of the fact that the government had earlier denied entry to the Mission on Sudan. Sudan claimed innocence by stating that it merely denied a visa to one member of

¹³⁰ See, e.g., Lithuanian delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 14, 2007) (High Level Segment).

¹³¹ See, e.g., Canadian delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 21, 2007) (in response to Kalin, Representative of the Secretary-General on Internally Displaced Persons).

¹³² See, e.g., Maltese delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Mar. 22, 2007) (in response to Erturk, Special Rapporteur on Violence Against Women).

¹³³ Louise Arbour, U.N. High Comm'r for Hum. Rts., Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Mar. 14, 2007).

¹³⁴ Jody Williams, Remarks on behalf of the Mission to Sudan at the U.N. Hum. Rts. Council 4th Sess. (Mar. 16, 2007).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 16, 2007) (in response to Williams, representative of Mission to Sudan).

the Mission.

Sudan also spoke about the Council's "politicisation" of the situation, on one occasion urging the Council not to repeat the "politically-motivated naming and shaming" of its predecessor.¹³⁸ On another occasion, Sudan commented that the Council was created "to move away from selectivity and double standards [and yet] today we witness a conspiracy against Sudan for political objectives."¹³⁹

Sudan again expressed reservations about the impartiality of various players in the UN, in particular, questioning the neutrality of the fact-finding mission.¹⁴⁰ It also questioned the impartiality of the OHCHR, specifically raising issues with the validity of the recommendation for an international presence in the region.¹⁴¹ Sudan condemned the "faulty report"¹⁴² of the Mission to Sudan and alleged that various findings of the Mission were either exaggerated or false.¹⁴³

2. The African Group

The African Group refused to accept the legitimacy of the Mission because it had not entered Sudan and its report was written while the Mission was in neighbouring countries. It opined that "the assessment [was] incomplete and the needs of Sudan were never fulfilled."¹⁴⁴

Despite expressing concerns about "the gravity of the situation," Algeria said that there had been "progress in the situation of human rights in Darfur."¹⁴⁵ The African Group reiterated its support for the government, stating, "We welcome the commitment of Sudan's government to cooperate with international support . . . [and] continuing to permit humanitarian support for people in Darfur."¹⁴⁶

¹³⁸ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 13, 2007) (High Level Segment).

¹³⁹ Sudanese delegate, *supra* note 137.

¹⁴⁰ "[R]eservations towards the head of the [fact-finding] mission. That person was from a country known for having a hostile position regarding Sudan. The subsequent behaviour of the mission's head confirmed that our fears were correct." Sudanese delegate, *supra* note 138.

¹⁴¹ The U.N. High Commissioner for Human Rights, Report of the High Commissioner for Human Rights and follow-up to the World Conference for Human Rights, ¶ 42, p. 11, U.N. Doc. A/HRC/4/49 (Mar. 2, 2007).

¹⁴² Sudanese delegate, *supra* note 137.

¹⁴³ *Id.*

¹⁴⁴ Algerian delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 16, 2007) (in response to Williams, representative of Mission to Sudan).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

3. The OIC

Pakistan agreed with the African Group's positions, stating that the OIC was "unable to comment on the substance of the [Mission's] report" due to the Mission's not having entered Sudan in order to fulfil its mandate.¹⁴⁷ Pakistan further opined that, "the concept of the responsibility to protect was not reflected" by the Mission, and that its report "has multiple political and security dimensions that go beyond its mandate." The OIC expressed support for Sudan in this respect, stating, "The government was asked to continue and intensify its cooperation . . . the Council must build on that . . . [T]here should be no selectivity and targeting . . . [T]he interests of the Sudanese people are not served by a list of recommendations."¹⁴⁸ Rather, the OIC believed that "the situation [could] only be improved by the government of Sudan and the assistance of the international community."¹⁴⁹

4. The EU

The EU criticised Sudan for its role in denying the Mission access to the country. It reminded the Council that the Special Session had been held "because of the extreme seriousness of the human rights situation in Darfur"¹⁵⁰ and that "the government of Sudan welcomed the decisions" made at that session. The EU said that this made it even more regrettable that "the government did not extend that cooperation to the Mission."¹⁵¹

Germany further reiterated the EU's position on this issue, stating, "The legitimacy of the mission is not in question, because it fulfilled its mandate and provided a good report."¹⁵² The report's findings were emphasized, particularly that government troops were committing violations in Darfur. Germany used the report to call for further action against the ongoing human rights violations by the government, the Council, and the international community.

5. Canada

Canada voiced support for the Mission and its report, while expressing strong concerns about the Sudanese government. The Canadian representative said that "Canada had welcomed the commitment by the

¹⁴⁷ Pakistani delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 16, 2007) (in response to Williams, representative of Mission to Sudan).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ German delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 16, 2007) (in response to Williams, representative of Mission to Sudan).

¹⁵¹ *Id.*

¹⁵² *Id.*

2009]

Improvement on the Commission?

107

government to cooperate . . . but regrets that the [M]ission was not allowed into Sudan.”¹⁵³

After expressing concerns about the ongoing violations, Canada stated, “The international community must act when a country is unwilling or unable to do so.” In addition, Canada called “on the government of Sudan to abide by its obligations under international law . . . [and] to establish independent, national human rights institutions.”¹⁵⁴

6. Other States

Botswana was a notable exception to the general African silence regarding Sudan at the High Level Segment. Botswana told the Council of its peacekeeping contribution and expressed concern about the “suffering of internally displaced persons and refugees in the region.”¹⁵⁵ Ghana also broke regional alliances, this time during the discussion on the Mission to Sudan, stating, “The situation in Sudan needs urgent attention . . . concerning the promotion and protection of human rights.”¹⁵⁶

Ireland, an observer at the Council, expressed grave concerns regarding the situation, commenting that the mission’s findings were a “badge of shame for the international community” and “urg[ing] the Council to act consensually to adopt the conclusions of the mission.”¹⁵⁷ Ireland was careful to point out that they had “no strategic interest in Sudan” nor “[any] motive to stand up for Darfur” other than the desire to “promote human rights.”¹⁵⁸ This was a direct reference to an earlier accusation that the Western interest in this region was motivated by oil.¹⁵⁹

E. The Fifth Session

The situation in Darfur was raised at the Fifth Session¹⁶⁰ by the Special Rapporteur on the Right to Food¹⁶¹ and the Independent Expert on Extreme

¹⁵³ Canadian delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 16, 2007) (in response to Williams, representative of Mission to Sudan).

¹⁵⁴ *Id.*

¹⁵⁵ Botswana delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 13, 2007) (High Level Segment).

¹⁵⁶ Ghana delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 16, 2007) (in response to Williams, representative of Mission to Sudan).

¹⁵⁷ Irish Minister for Human Rights, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 14, 2007) (High Level Segment).

¹⁵⁸ *Id.*

¹⁵⁹ Palestinian delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 16, 2007) (in response to Williams, representative of Mission to Sudan).

¹⁶⁰ The Fifth Session took place from June 11-18, 2007. Notes on file with author.

¹⁶¹ Oral intervention of Jean Ziegler, Special Rapporteur on the Right to Food, Remarks at

Poverty.¹⁶² The Special Rapporteur on Sudan¹⁶³ presented a report and made a number of recommendations. Darfur was also mentioned during the report on the situation in Israel and the Occupied Palestinian Territories in regards to the universality of human rights, with the head of the Mission¹⁶⁴ stating, “It is important that this Council has sought to investigate the situation in Darfur.”

1. Sudan

Sudan denounced the Special Rapporteur on Food’s report, asserting that there were factual inaccuracies, and stating that humanitarian food aid was being blocked by those parties to the conflict who had not signed the Peace Agreement.¹⁶⁵ Sudan also blamed militia groups – especially the Janjawid – for causing the problems set out in the session. Sudan strongly denied any governmental responsibility for the social exclusion and the impeding of Darfuris’ ability “to enjoy the essential freedoms in life.”¹⁶⁶ Sudan again asked for international support, stating, “The government of Sudan asks this Council to call on the United Nations . . . to provide us with aid.”¹⁶⁷

Sudan reiterated its “commitment to cooperate with the Council and the Group of Experts.”¹⁶⁸ It emphasized its alleged efforts to improve the situation in the region before again requesting assistance in doing so, stating, “The United Nations and the international community must render support to Sudan for an action plan to deal with Darfur.”¹⁶⁹

2. The African Group

Algeria repeated the usual support for the Sudanese government and praised its efforts and cooperation by commenting that “the dialogue between Sudan and the Group of Experts was open and frank.”¹⁷⁰ The African Group supported the recommendations made by the Group of Experts, and expressed that, thus far, it had been successful, stating:

the U.N. Hum. Rts. Council 5th Sess. (June 11, 2007).

¹⁶² Oral intervention of Arjun Sengupta, Independent Expert on Extreme Poverty, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 11, 2007).

¹⁶³ Oral intervention of Sima Samar, Special Rapporteur on Sudan, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 13, 2007).

¹⁶⁴ Desmond Tutu, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 27, 2007).

¹⁶⁵ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 11, 2007).

¹⁶⁶ Arjun Sengupta, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 11, 2007).

¹⁶⁷ Sudanese delegate, *supra* 165.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Algerian delegate, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 13, 2007).

2009]

Improvement on the Commission?

109

We particularly [welcome] the consultation that went on between the Group of Experts and the regional groups This Group made a selection of various recommendations that fall within responsibility of this council They also established a timeframe in terms of short and long term action The African group has been involved in addressing Darfur at the level of the Council I am confident that we will achieve yet another consensus in terms of this very delicate issue What is important is the consensus on the ground.¹⁷¹

Furthermore, in commenting on statements by Desmond Tutu, the Algerian delegate said, “[T]oday I have the pleasure of knowing that we have moved forward in Darfur . . . I just pray and hope that the progress we are making continues.”¹⁷²

3. The OIC

Pakistan also had a positive view of the Group of Experts and Sudan’s cooperation with it: “The government of Sudan has worked well with the UN to implement the existing resolutions We support the recommendation that the experts continue their work for another fixed period of time We appreciate having a focal point to coordinate assistance to Sudan.”¹⁷³

4. The EU

Germany, on behalf of the EU, questioned the usefulness of the report, noting that the members of the Council “all know of the problems in Darfur,” and that rather than giving new recommendations[,] the Council should be trying to ensure that existing ones are implemented.¹⁷⁴ The EU’s position was that “it is essential that we actually change the situation on the ground . . . because as we consider the report, the violence goes on.”¹⁷⁵

Germany’s response to the Special Rapporteur on the right to food’s¹⁷⁶ report condemned the Sudanese government for its role, and criticised the lack of access to food in Darfur, as well as the use of food and water as a political tool in the region.¹⁷⁷

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Pakistani delegate, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 13, 2007).

¹⁷⁴ German delegate, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 13, 2007).

¹⁷⁵ *Id.*

¹⁷⁶ Ziegler, *supra* note 161.

¹⁷⁷ German delegate, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 12, 2007).

5. Canada

Canada expressed a more positive view of Special Rapporteur Samar's report than that of the EU, stating:

We welcome the report We believe after this report that the government of Sudan can now show its commitment to human rights We welcome the dialogue that has taken place between Sudan and the international community, and we note that all parties, including rebel groups and regional neighbours, should be involved.¹⁷⁸

However, Canada did speak of the ongoing violations in Darfur and the need to deal with this situation, commenting, "Since March 2007, there has been tremendous sexual violence in Darfur Humanitarian assistance is compromised by all parties to the conflict We call on all parties to bring the violence to an immediate halt."¹⁷⁹ While noting some improvements, Canada reiterated its usual position that the international community "needs to do better to help the people of Darfur."¹⁸⁰

6. Other States

Most countries used the discussions to reiterate their previous positions on the situation, but there were a few statements of particular interest. Central African Republic, a neighbour of Sudan affected by the conflict, broke regional trends in condemning the situation by stating, "Darfur, after the two world wars, is the worst humanitarian disaster the world has witnessed. It is a shame for all mankind. Failing to have dealt with Darfur has encouraged the abuse of human rights around the world."¹⁸¹ As such, they believed "we must stop this catastrophe and protect the fundamental rights that the people of Sudan are entitled to."¹⁸² To this end, the United States called for sanctions to be imposed against Sudan¹⁸³ in order to

¹⁷⁸ Canadian delegate, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 13, 2007).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Central African Republic delegate, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 13, 2007) (in response to Samar, Special Rapporteur on Sudan).

¹⁸² *Id.*

¹⁸³ "This Council has yet to adequately address the human rights violations in Sudan. The targeting of women and children remain a grave concern The US has imposed sanctions on Sudan to bring about a peaceful resolution to this conflict. We wish to end the suffering of millions of Sudanese. We would welcome other countries to join us. At the Security Council the US is working on a resolution to widen sanctions against Sudan. We call on Sudan to disarm the Janjaweed, demonstrate commitment to peace, cease aerial bombardments, stop obstructions and allow peacekeepers and humanitarian workers access to internally displaced persons' camps." United States delegate, Remarks at the U.N. Hum. Rts. Council 5th Sess.

2009]

Improvement on the Commission?

111

encourage the government to fulfil its international obligations and cooperate fully.

China again expressed the opinion that poverty was the fundamental problem in Darfur, commenting that the economic and social issues that contributed to the situation had to be addressed.¹⁸⁴ Syria brought up the politicisation of the conflict, declaring, “[Alongside] other countries, we are concerned with the politicisation of the situation in Darfur with external parties exploiting the situation to achieve their own objectives, particularly in oil.” Syria believed that improvement would not occur until there was an end to external interference.¹⁸⁵

F. The Sixth Session

Having postponed its follow-up at the Fifth Session, the Council heard an update from the Group of Experts¹⁸⁶ during the Sixth Session.¹⁸⁷ The government of Sudan was urged to cooperate with the group and implement its recommendations. The situation in Darfur was again raised multiple times during general debates at this Session. The first day of the resumed Sixth Session¹⁸⁸ coincided with the 60th anniversary of the Universal Declaration on Human Rights. The report of the High Commissioner¹⁸⁹ spoke of “grave violations” in Sudan since September, stating that “more needs to be done by the government in Khartoum and the international community to ensure protection for civilians,” and that the “rule of law needs to be strengthened, especially in Darfur where lawlessness abounds.”¹⁹⁰

At the resumed Sixth Session, the Chair of the Group of Experts¹⁹¹ presented its final report.¹⁹² The Group stressed Sudan’s “primary duty to respect human rights and to comply with international obligations,” and

(June 13, 2007).

¹⁸⁴ “The fundamental problem is poverty . . . we must address the economic and social issues that contribute [to the conflict].” Chinese delegate, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 13, 2007).

¹⁸⁵ Syrian delegate, Remarks at the U.N. Hum. Rts. Council 5th Sess. (June 13, 2007).

¹⁸⁶ Walter Kalin, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Sept. 24, 2007) (on behalf of the Group of Experts).

¹⁸⁷ The Sixth Session took place from September 10-28, 2007.

¹⁸⁸ The Sixth Session resumed during December 10-14, 2007.

¹⁸⁹ Louise Arbour, U.N. High Comm’r for Hum. Rts., Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 11, 2007).

¹⁹⁰ *Id.*

¹⁹¹ Sima Samar, Chair of Group of Experts, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 11, 2007).

¹⁹² U.N. Hum. Rts. Council, Group of Experts, *Human Rights Situations That Require the Council’s Attention*, U.N. Doc. A/HRC/6/19 (Nov. 28, 2007).

expressed continuing concerns about lack of governmental action. The Sudanese government's "cooperative behaviour" in certain areas was noted, but Samar reported that "in terms of substance, not much impact has occurred [since the Group of Experts was set up] A lot of the recommendations made could have been implemented in a few months with minimal cost [but this has not occurred]."¹⁹³

1. Sudan

In a statement on Human Rights Day, Sudan described the situation in Darfur as "a difficult period in Sudan's history."¹⁹⁴ However, it reiterated its commitment to improving the situation, assuring the Council that "no efforts have been spared by Sudan to ensure human rights in the country."¹⁹⁵

Sudan continued to take this position during the Session, alleging its firm commitment to the implementation of resolutions, and attempting to convince the Council that it had recently undertaken activities in compliance with the recommendations. Similarly, Sudan's response to the High Commissioner asserted that the regime "respects all conventions of human rights," before alleging that the government "promotes human rights protection [in Darfur]."¹⁹⁶

Sudan responded to Special Rapporteur Samar's report in a similar manner, again attempting to assure the Council of its "cooperation with the Human Rights Council, [the] Special Rapporteur and [the] Group of Experts [which] has given the fledgling Council the chance of credibility."¹⁹⁷ These comments were made despite reports of worsening conditions and ongoing violations at that time.¹⁹⁸

Sudan also repeated other classic positions, such as calling on the Council to ensure that it did not act with "double standards or selectivity when it comes to protecting vulnerable groups and promoting human rights."¹⁹⁹ Sudan also repeated its request for assistance: while arguing that "the situation in Darfur is improving," Sudan accepted that "many factors

¹⁹³ Samar, *supra* note 191.

¹⁹⁴ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 10, 2007) (general discussion on Human Rights Day).

¹⁹⁵ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 11, 2007) (in response to Sima Samar, Chair of Group of Experts).

¹⁹⁶ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 11, 2007) (in response to the High Comm'r).

¹⁹⁷ Sudanese delegate, *supra* note 194.

¹⁹⁸ For example, Amnesty said: "As a result of attacks, particularly by government and paramilitary groups, some 280,000 people were displaced bringing the number of displaced in Darfur to more than 2,387,000." AMNESTY INT'L, 2008 ANNUAL REPORT FOR SUDAN (2008), <http://www.amnestyusa.org/annualreport.php?id=ar&yr=2008&c=SDN>.

¹⁹⁹ Sudanese delegate, *supra* note 194.

2009]

Improvement on the Commission?

113

exert influence on the situation,” and asked the international community “to help us try to find solutions.”²⁰⁰

2. The African Group

The African Group spoke about the “positive developments and improvements” in Darfur and attributed these to “the strong will of the government of Sudan to improve the situation.”²⁰¹ Egypt, again, commended “the high level of cooperation shown by the government of Sudan.”²⁰² At the resumed Session, Egypt repeated this position, stating:

We had hoped that the High Commissioner would acknowledge the efforts of the Sudanese government to improve the situation on the ground, as noted by the Expert Group on Darfur. The Sudanese authorities have taken tangible steps to improve the situation on the ground.²⁰³

Further, Egypt asserted that the international community “has failed to truly assist” Sudan and the Darfur region, a position which ignored the Sudanese government’s resistance to various initiatives and Recommendations.²⁰⁴ Requests that “international community and agencies must assist Sudan”²⁰⁵ were reiterated with the African Group calling “on the OHCHR to continue to provide technical support . . . and call[ing] on the international community to help provide the resources needed to improve the situation.”²⁰⁶

3. The OIC

The OIC expressly aligned itself with the African Group’s statements on Sudan at this Session. It did not comment extensively on Sudan, expressing the wish to avoid mentioning specific countries during general discussions because it led to the need to then “talk about all the issues.”²⁰⁷

The only position expressed about Sudan by the OIC was that of ongoing support for the government. Pakistan focussed its comments on the international assistance necessary to enable the government to further deal

²⁰⁰ Sudanese delegate, *supra* note 195.

²⁰¹ Egyptian delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Sept. 24, 2007) (in response to Walter Kalin, on behalf of the Group of Experts).

²⁰² *Id.*

²⁰³ Egyptian delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 11, 2007).

²⁰⁴ *Id.*

²⁰⁵ Egyptian delegate, *supra* note 201, at 39.

²⁰⁶ Egyptian delegate, *supra* note 203, at 39.

²⁰⁷ Pakistani delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 11, 2007).

with the situation in Darfur, stating, “The Sudanese government’s efforts need concrete support from the international community.”²⁰⁸

4. The EU

In response to the Group of Experts, the EU welcomed the “great cooperation of the government of Sudan.”²⁰⁹ However, unlike the African Group, the EU expressed concerns about the continuing situation of human rights in Sudan, stating, “We urge Sudan to demonstrate its willingness to fight violations of human rights in Darfur and to combat impunity.”²¹⁰ Similarly, after the High Commissioner’s report, Portugal voiced the EU’s “grave concern over human rights abuses in Darfur” before calling for an “end to impunity” and for perpetrators to be brought to justice.²¹¹

This acknowledgement of the government’s efforts, alongside condemnation of the situation and calls for further changes, was repeated after the Group of Experts’ report in December. In this statement, Portugal again urged the Sudanese government to end the human rights violations in Darfur and to fulfil its international obligations.²¹²

5. Canada

Canada yet again took a stronger position than the EU regarding the Sudanese government and the situation in Darfur. Canada spoke of its “ongoing concern” about the continued violence and documented violations in Darfur.²¹³ Canada also expressed that it was “appalled” at the appointment of Ahmad Mohammed Harun as co-chairman of a national committee charged with addressing human rights violations in Darfur.²¹⁴ They were concerned because the Council was previously informed that Harun had been formally charged with crimes by the International Criminal Court, and that his appointment “casts doubt” on the government of Sudan’s commitment to improve the human rights situation in Darfur.²¹⁵

²⁰⁸ *Id.* (in response to Samar, Chair of Group of Experts).

²⁰⁹ Portuguese delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Sept. 24, 2007) (in response to Kalin on behalf of the Group of Experts).

²¹⁰ *Id.*

²¹¹ Portuguese delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 11, 2007) (in response to the High Comm’r).

²¹² Portuguese delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 13, 2007) (in response to Samar, Special Rapporteur on Sudan).

²¹³ Canadian delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Sept. 24, 2007) (in response to Kalin on behalf of the Group of Experts).

²¹⁴ *See, e.g.,* ‘Ahmad Mohammed Harun, *Trial Watch*, http://www.trial-ch.org/en/trial-watch/profile/db/legal-procedures/ahmad-mohammed_harun_621.html.

²¹⁵ *See, e.g.,* “In February, the Prosecutor of the International Criminal Court (ICC)

In December, Canada stressed that improvements on the ground would only occur if the Group of Experts' recommendations were implemented. It criticized the government for saying much and doing little, stating, "We are concerned that the failure to implement many of the recommendations shows that there is rhetoric, but little concrete action."²¹⁶

6. Other States

Zambia again broke regional alliances, urging the Sudanese government to cooperate with the Council and the international community to "improve the human rights situation on the ground."²¹⁷ In expressing its concerns, Zambia said, "Attacks still continue, which is of great concern because the people of Darfur should be able to have their lives return to normal, and to close the chapter on this issue."²¹⁸

Algeria retained its regional alliances despite no longer chairing the African Group. Having congratulated Sudan for its "excellent cooperation," it expressed deep alarm at the "exaggerated disinformation" on Darfur, stating that the situation received disproportionate coverage in the media.²¹⁹ Algeria then used a tactic often employed by African Group and OIC, shifting the focus away from this region by opining that the Council should instead be discussing the situations in Iraq and Palestine that "require specific attention."²²⁰

The United States, an observer state, denounced the poor human rights records in a number of countries including Sudan, and again questioned the relevancy of a body that ignores ongoing human rights abuses.²²¹

presented evidence of war crimes and crimes against humanity in Darfur to the ICC Pre-Trial Chamber against Ahmad Muhammad Harun, former Minister of State for the Interior then Minister of State for Humanitarian Affairs, and Janjawid militia leader Ali Mohammad Ali Abdel-Rahman (Ali Kushayb)." AMNESTY, *supra* note 198.

²¹⁶ Canadian delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 11, 2007) (in response to Samar, Chair of Group of Experts).

²¹⁷ Zambian delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 11, 2007). (in response to Samar, Chair of the Group of Experts).

²¹⁸ *Id.*

²¹⁹ Algerian delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 11, 2007) (in response to Samar, Chair of the Group of Experts).

²²⁰ This is despite the Council passing nine resolutions on Israel as compared with three non-condemnatory resolutions on Sudan during the first year of the Council.

²²¹ "This council is becoming less and less relevant to the situations that human rights defenders face because it continues to ignore the oppressing situations in many countries." United States delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Sept. 24, 2007) (in response to Kalin on behalf of the Group of Experts).

G. *The Seventh Session*

The beginning of the Seventh Session²²² saw a number of Western States raising the situation in Darfur during the High Level Segment.²²³ The High Commissioner noted the continued and escalating violence in West Darfur during her presentation of the OHCHR Annual Report.²²⁴ Western States again spoke about Darfur during the general debate on Agenda Item 4.²²⁵ The report of the Special Rapporteur on Sudan condemned the “culture of impunity” in Sudan, and voiced concerns about the “persistent violence, military force, and the government’s failure to protect citizens” in Darfur.²²⁶

1. Sudan

Sudan followed its usual pattern of assuring the Council that the government would “continue to cooperate with the Group of Experts and the Special Rapporteur on Sudan.”²²⁷ Sudan spoke of improvements in Darfur and initiatives taken on by the government, and then called on all parties to the conflict to take on similar initiatives. Sudan’s response to the High Commissioner’s report was to assert that the situation in West Darfur was under control, commenting that the government had “already put forward the peaceful solution in its right, appropriate way.”²²⁸

Sudan took another typical position in alleging that there were factual inaccuracies in the Special Rapporteur on Sudan’s report, stating, “We believe that the facts of the report are not represented by the facts [on the ground].”²²⁹ Sudan believed that, in fact, positive improvements had been achieved in the region.

Again, during the High Level Segment, Sudan attempted to shift the focus from its own crisis onto the situation in Israel and the Occupied

²²² The Seventh Session took place from March 3-28, 2008.

²²³ Oral interventions include: Switzerland’s Micheline Calmy-Ray, Luxembourg’s Vice Prime Minister Jen Asselborn, and France’s State Secretary for Foreign Affairs and Human Rights Rama Yade, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 3, 2008) (High Level Segment).

²²⁴ Oral intervention of High Comm’r, Louise Arbour, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 7, 2008).

²²⁵ Delegates include: The Netherlands, Switzerland, Ireland, and Australia, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 14, 2008 (general debate on Agenda Item 4).

²²⁶ Oral intervention of Samar, Special Rapporteur on Sudan, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 7, 2008).

²²⁷ Sudanese Minister of Justice, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 3, 2008) (High Level Segment).

²²⁸ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 7, 2008) (in response to the High Comm’r).

²²⁹ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 17, 2008) (in response to Samar, Special Rapporteur on Sudan).

2009]

Improvement on the Commission?

117

Palestinian Territories, declaring that:

[T]he entire world is watching with sadness the massacres in the OPT [W]e strongly condemn Israeli aggressions. We call on the Human Rights Council to protect the innocent civilians and children and women who are being killed on a daily basis and in cold blood.²³⁰

It could be argued that this was Sudan's way of showing its allegiance with the OIC and the Arab Group, as well as diverting attention from the humanitarian crisis on its own soil.

2. The African Group

The African Group reiterated its "appreciation" for the "government of Sudan" in its efforts and cooperation, citing the Special Rapporteur's activities across the country as evidence of "Sudan's willingness to comply with the United Nations."²³¹ Its speech focussed on the "cooperative spirit that has gone on in regards to Sudan," expressing the hope that this would continue.²³²

3. The OIC

Pakistan expressed similar sentiments to the African Group, stating, "The Special Rapporteur acknowledged the progress of the Sudanese government [T]hey are noteworthy and must be encouraged We appreciate the consistent efforts of the Sudanese government."²³³

The OIC also called for further assistance to the region, stating, "The government requires international support without political qualifications," a position reiterated in its later calls for "support without political criteria."²³⁴

4. The EU

During the general debate on Agenda Item 3, the EU deplored the "many instances of discrimination against lesbian, gay, bisexual and transgender people in Sudan,"²³⁵ as well as condemning the renewal of

²³⁰ Sudanese Minister of Justice, *supra* note 227.

²³¹ Egyptian delegate, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 17, 2008) (in response to Samar, Special Rapporteur on Sudan).

²³² *Id.*

²³³ Pakistani delegate, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 17, 2008) (in response to Samar, Special Rapporteur on Sudan).

²³⁴ *Id.*

²³⁵ Slovenian delegate, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 13, 2007) (general debate on Agenda Item 3).

violence in West Darfur.²³⁶ Concerns were also raised after the Special Rapporteur on Sudan's report, with Slovenia inquiring what could be done to ensure access to humanitarian aid, to bring perpetrators to justice, to halt the violence against women, and to protect journalists.²³⁷ The EU criticized the Sudanese government for failing to adequately address these issues.²³⁸

5. Canada

Canada said relatively little in relation to Sudan at this Session. Its primary focus was to question the Special Rapporteur on Sudan about the best ways to change the situation on the ground in Darfur. In particular, Canada asked, "How can we [the Council] assist the Special Rapporteur to carry out the recommendations in your report?"²³⁹

6. Other States

Cuba repeated its previous opinion that "all of these scourges were caused by colonialism,"²⁴⁰ although it neither expanded upon nor explained this position. Other individual States and Observer Missions commending the Sudanese government at this Session included Palestine, Algeria, Pakistan (on behalf of the OIC), South Korea, Saudi Arabia, Cuba, China, Russia, and Zimbabwe.

The UK voiced the strongest condemnation of Sudan, stating, "The situation has not fundamentally changed, including the indiscriminate killing on both sides. The Special Rapporteur's reports remain the same from one year to the next and we call on the Sudanese government to address this issue."²⁴¹

III. RESOLUTIONS AND DECISIONS OF THE COUNCIL REGARDING DARFUR

As a result of the reports and discussions at the Council, a number of Resolutions and Decisions were passed regarding Darfur. Many of these included recommendations for how to improve the situation on the ground. The African Group and the OIC ensured that these contained weaker

²³⁶ *Id.*

²³⁷ Slovenian delegate, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 17, 2008) (in response to Samar, Special Rapporteur on Sudan).

²³⁸ *Id.*

²³⁹ Canadian delegate, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 17, 2008) (in response to Samar, Special Rapporteur on Sudan).

²⁴⁰ Cuban delegate, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 17, 2008) (in response to Samar, Special Rapporteur on Sudan).

²⁴¹ United Kingdom delegate, Remarks at the U.N. Hum. Rts. Council 7th Sess. (Mar. 17, 2008) (in response to Samar, Special Rapporteur on Sudan).

language than the Western States would have preferred. However, in order to get them passed, the weakened language prevailed. This language affected the impact of these resolutions and decisions on the ground, which was often lackluster. Individual states and the Special Rapporteur on Sudan repeatedly made this point when calling for the implementation of recommendations.

A. *Decision on Darfur*

The Second Session produced a Decision on Darfur²⁴² that called on all parties to the conflict to sign and adhere to the Darfur Peace Agreement²⁴³ and to cease violations of international humanitarian law.²⁴⁴ It also reminded the international community of its obligations, calling on states to honor their promises of assistance.

After weeks of delay due to informal consultations,²⁴⁵ the draft Decision²⁴⁶ was presented by Algeria, on behalf of the African Group.²⁴⁷ The EU, unhappy with what it perceived to be too weak a draft, proposed revisions in a separate draft.²⁴⁸ One point of disagreement was whether “the” or “a” should precede “report” in the text of the Decision, which would determine whether to require a specific follow-up report. The African Group deemed this “extremely sensitive,” stating, “One of the reasons why the Commission was not successful was because of the naming and shaming [of States].”²⁴⁹ It argued that this issue directly related to the principle of non-selectivity.²⁵⁰ The African Group strongly disagreed with the EU’s position that the “situation of Darfur really requires special reporting.”²⁵¹

This difference of opinion on a seemingly technical matter actually struck at the heart of the issue of how the Council would attempt to avoid the pitfalls of its predecessor – that is, the issue of whether country-specific focus could, or even should occur in certain circumstances. While it was

²⁴² U.N. Hum. Rts. Council, *Darfur*, U.N. Doc. A/HRC/DEC/2/115 (Jan 9, 2007).

²⁴³ The Darfur Peace Agreement signed in Abuja.

²⁴⁴ *Darfur*, *supra* note 242, at para. 2.

²⁴⁵ Despite ongoing escalation of violence in Darfur at this time, as reported by Amnesty, for example, “November at least 50 civilians were killed, including 21 children under 10, when Janjawid attacked eight villages and an IDP camp in Jebel Moon in West Darfur. AMIS forces arrived the day after the attack.” AMNESTY, *supra* note 22, at 244.

²⁴⁶ U.N. Hum. Rts. Council, *Darfur*, U.N. Doc. A/HRC/2/L.44 (Oct. 3, 2006).

²⁴⁷ Oral intervention of the Algerian delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Sept. 22, 2006).

²⁴⁸ U.N. Hum. Rts. Council, *Darfur*, U.N. Doc. A/HRC/2/L.45 (Oct. 3, 2006).

²⁴⁹ Algerian delegate, *supra* note 247.

²⁵⁰ A founding principle of the Council was non-selectivity, G.A. Res. 60/251, ¶ 4, U.N. Doc. A/RES/60/251 (Ap. 3, 2006).

²⁵¹ Finnish delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (2006).

agreed that the Council should generally avoid politicisation and selectivity, the question was whether this should apply during a humanitarian crisis such as the one in Darfur.

The EU also raised substantive issues, especially in relation to the issue of impunity. It argued that nothing would change through monitoring, and rather the text needed to include places of detention for perpetrators. Canada voiced support for the proposed amendments, stating that while Algeria's efforts were appreciated, they "fail[ed] to address essential issues."²⁵² There was support for Canada's position that "people in Darfur should not wait for another six months until the Council meets again."²⁵³ However, the African Group did not share the concern that the situation in Darfur was deteriorating, instead discussing recent positive developments in the region.

The EU expressed "deep disappointment"²⁵⁴ at the defeat of its tabled amendments, as the Draft Resolution was said to not adequately address the deteriorating situation. The UK further expanded on this statement, commenting that, "It is hard to imagine a situation where it would be more appropriate for the Council to act."²⁵⁵

B. *Decision on the Situation of Human Rights in Darfur*

At the Special Session on Darfur,²⁵⁶ the Council adopted, by consensus, a Decision²⁵⁷ put forward by the President that created a High Level Mission to Sudan. This Decision neither condemned Sudan nor used the word "violation," thus making it weaker than the Western states would have liked. The Decision allowed for the composition of the five members of the Mission to Sudan to be selected by the President, although it did specify that the Special Rapporteur on Sudan would also be a part of the Mission. Sudan expressed its hope that the President would use "wisdom and neutrality"²⁵⁸ in picking the members of the mission.

Algeria spoke before the vote, and 19 other Council members²⁵⁹ spoke afterwards, all lauding the Council for its cooperation, compromise, and

²⁵² Canadian delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (2006).

²⁵³ *Id.*

²⁵⁴ Finnish delegate, Remarks at the U.N. Hum. Rts. Council 3d Sess. (Nov. 28, 2006).

²⁵⁵ *Id.*

²⁵⁶ The Fourth Special Session of the Human Rights Council on the Human Rights Situation in Darfur, took place from December 12-13, 2006.

²⁵⁷ U.N. Hum. Rts. Council, *Situation of Human Rights in Darfur*, U.N. Doc. A/HRC/S-4/101 (Dec. 13, 2006).

²⁵⁸ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12-13, 2006).

²⁵⁹ Council members include: seven OIC countries, five EU countries, four GRULAC (including Cuba), and India, Russia, China, and Zambia.

congenial approach, with some making it clear that they saw the consensus as proving the legitimacy of the Council.²⁶⁰ The United Kingdom reiterated its hope that the Council use this constructive spirit to move its focus away from being solely on the Middle East. The President invited Council members to “maintain this spirit when we deal with other situations.”²⁶¹ Cuba said that one of the best things about the calling of this resolution was that it left aside “inflammatory language” and the desire to impose “unnecessary condemnation,” despite the fact that Cuba does not possess an entirely clean record in this regard.²⁶²

C. Resolution on the Follow-Up to Decision S-4/101

At the Fourth Session, a Resolution²⁶³ was adopted by consensus, following-up the Decision from the Special Session. It was written and co-sponsored by the EU and the African Group. Germany, on behalf of the EU, said that its adoption showed that “the Human Rights Council does not close its eyes to the suffering of the people of Darfur.”²⁶⁴ It further stated that, “this [Resolution] is not about political games, diplomatic manoeuvres [but is] solely about the realisation of human rights.”²⁶⁵

Algeria, on behalf of the African Group, emphasized the importance of consensus on this “very complex and politically charged subject,” noting that achieving consensus had been placed above the need to wholly satisfy all members in the drafting of the Resolution.²⁶⁶ Algeria expressed hope that the text would “advance the situation of victims on the ground” in Darfur.²⁶⁷

D. Resolution on the Group of Experts

Having seen relatively little improvement in Darfur as a result of the work of the Group of Experts,²⁶⁸ the Fifth Session saw the EU and the

²⁶⁰ Including India, China, Saudi Arabia and Tunisia.

²⁶¹ United Kingdom delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12-13, 2006).

²⁶² Cuban delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12-13, 2006).

²⁶³ Resolution on the Follow-Up to Decision S-4/101 of 13 December 2006 adopted by the Human Rights Council at its Fourth Special Session entitled the Human Rights Situation in Darfur, H.R.C. Res. 4/8, U.N. Doc. A/HRC/RES/4/8 (Apr. 30, 2007).

²⁶⁴ German delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 30, 2007).

²⁶⁵ *Id.*

²⁶⁶ Algerian delegate, Remarks at the U.N. Hum. Rts. Council 4th Sess. (Mar. 30, 2007).

²⁶⁷ *Id.*

²⁶⁸ For example, see Amnesty’s report, “In March the Council convened a group of experts to pursue previous recommendations made by UN human rights bodies on Darfur. The Sudanese government-appointed Human Rights Advisory Council responded to these

African Group jointly table²⁶⁹ a Draft Resolution following up Resolution 4/8 on Darfur.²⁷⁰ The Council proposed a six-month extension of the Special Rapporteur on Sudan's and the Group of Experts' mandates. However, despite the extension being passed, the Group of Experts' work was not finished, nor their recommendations implemented, by the end of the year,²⁷¹ and the Council chose not to extend the mandate further at the following session.²⁷²

E. Resolutions on the Mandate of the Special Rapporteur

The review of the mandate of the Special Rapporteur on Sudan occurred at the resumed Sixth Session.²⁷³ The EU expressed its "strong support of the mandate and the excellent work of the Special Rapporteur," and opined that "the Special Rapporteur can play a very important role on combating impunity, but it is the responsibility of Sudan to respect and ensure human rights."²⁷⁴ The EU expressed hope that "the renewal of the mandate w[ould] be adopted by consensus,"²⁷⁵ a position supported by other Western States.²⁷⁶

The African Group argued that, because Sudan would be subject to Universal Periodic Review,²⁷⁷ the mandate should be eliminated.²⁷⁸ Sudan

recommendations but according to the report presented to the Council in November, few of the recommendations were implemented." AMNESTY, *supra* note 198, at 280-281, AI Index POL 10/001/2008, May 28, 2008.

²⁶⁹ Consideration of all Resolutions and Decisions were postponed at this Session. See U.N. HRC, 5th Sess., 9th mtg. at 1, U.N. Doc. A/HRC/DEC/5/102 (Jun. 18, 2007).

²⁷⁰ A follow-up to Resolution 4/8 of March 30, 2007, was adopted by the Human Rights Council at its fourth session, entitled *Follow-up to decisions S-4/101 of 13 December 2006 adopted by the Human Rights Council at its fourth special session entitled 'Situation of Human Rights in Darfur'*, U.N. Hum. Rts. Council, 5th Sess., at 1, U.N. Doc. A/HRC/5/L.6 (Jun. 15, 2007).

²⁷¹ "In December the Council urged Sudan to implement all outstanding recommendations identified by the group of experts on Darfur." AMNESTY, *supra* note 198, at 281, AI Index POL 10/001/2008, May 28, 2008.

²⁷² Resolution on the Human Rights Council Group of Experts on the Situation of Human Rights in Darfur, H.R.C. Res. 6/35, A/HRC/RES/6/35 (Dec. 14, 2007).

²⁷³ U.N. Hum. Rts. Council 6th Sess., 34th mtg. at 125, U.N. Doc A/HRC/6/22 (Dec. 13-14, 2007).

²⁷⁴ Portuguese delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 13, 2007).

²⁷⁵ *Id.*

²⁷⁶ For example, the U.S. said that "the council cannot ignore the on going crisis in Sudan . . . [We] fully support the renewal of the mandate and resist all efforts to weaken it." U.S. delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 14, 2007).

²⁷⁷ Universal Periodic Review applies to all UN Member States, G.A. Res. 60/251, ¶ 9, U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

²⁷⁸ This position was supported by states such as Cuba and Russia, which said that the

said, “There is a politicization that led to the dismantling of the Commission which has started once again to infiltrate the work of this Council,” and called on the Special Rapporteur “to reflect very carefully on the information provided by the Sudanese authorities.”²⁷⁹

The Resolution on the Mandate of the Special Rapporteur on the Situation of Human Rights in the Sudan²⁸⁰ was submitted by Egypt – despite their “assessment that country-specific mandates are instructive and have limited impact”²⁸¹ – and was passed by consensus.

F. Resolution on Human Rights in Sudan

At the Seventh Session, a Resolution on Sudan²⁸² was submitted by the African Group and co-sponsored by the United Kingdom. The EU joined the consensus, and expressed its belief that the Resolution highlighted the deep concern of the Council. Canada deplored the fact that, again, the Resolution fell short and did not adequately address the situation in Darfur, stating, “It fails to reflect the recent deterioration of the situation.”²⁸³

Canada recalled recent reports showing grave violations of human rights, and therefore regretted that this resolution was not more “robust.”²⁸⁴ Although Canada joined the consensus, it believed that the people of Sudan deserved better.²⁸⁵ Again, the weakening of the Resolution can be explained by the need to pass it, and the need to gain consensus in doing so. However, the result was, once again, a resolution lacking in both language and substance.

IV. PATTERNS AND IMPACT OF REGIONAL ALLIANCES

The pattern that emerged from the discussions on Darfur was that the Council was split between two sets of groups and states. In the first group were those who expressed the opinion that the Sudanese government was cooperating fully and required further international assistance. In the second were those who believed that the government was not doing all that it could,

Special Rapporteur on Sudan would only be effective if it was adopted with the consent of the Sudanese authorities. Cuban and Russian delegates, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 14, 2007).

²⁷⁹ Sudanese delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 13 2007).

²⁸⁰ Resolution on the Mandate of the Special Rapporteur on the Situation of Human Rights in the Sudan, H.R.C. Res. 6/34, U.N. Doc. A/HRC/RES/6/34 (Dec. 14, 2007).

²⁸¹ Egyptian delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 13, 2007).

²⁸² Resolution on the Situation of Human Rights in the Sudan, H.R.C. Res. 7/16, U.N. Doc. A/HRC/RES/7/16 (Mar. 27, 2008).

²⁸³ Canadian delegate, Remarks at the U.N. Hum. Rts. Council 7th Sess. 27 March 2008.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

and who called on Sudan to comply with its international obligations and improve the situation. The former often resorted to accusing the Council, its mandate holders, or even member states, of “politicisation”²⁸⁶ in order to block intervening action. The term “politicisation” has become a derisive insult within the UN, and a rallying cry against unwanted action proposed by Western States. In this context it was used to accuse Western States and mandate holders of falsifying information and attacking the Sudanese government. However, the reports of NGOs, as well as bodies of the UN, often independently verified the information being called into question.²⁸⁷

A. *The African Group*

The African Group consistently expressed the opinion that the government was doing all that it could to ensure resolution of the crisis, and that other parties to the conflict were to blame for the crisis. For example, at the Third Session, Algeria said that “the alleged links between the government and militias referred to by the High Commissioner have yet to be documented in an objective way.”²⁸⁸ However, not only had documentation compiled by OHCHR been presented to the Council by the High Commissioner at the beginning of the Session,²⁸⁹ it was also verified by independent information from NGOs.²⁹⁰

Individual members of the African Group reiterated the collective position during discussions, even where their opinions contradicted independent evidence. For example, Egypt, a member of both the African Group and the OIC, said “we commend Sudan for her cooperation and efforts to disarm militias, despite practical challenges.”²⁹¹ However, Amnesty International contradicted these statements, reporting that “a government promise to disarm the Janjawid was broken, as it had been after numerous previous agreements, and none of the agreed commissions was operating by the end of 2006, including the Compensation Commission.”²⁹²

The African States which did, at times, break regional alliances in discussing Darfur, were those known to be more benign or democratic than

²⁸⁶ For a theoretical examination, see *Heinze, supra* note 2.

²⁸⁷ See, e.g., AMNESTY INTERNATIONAL ANNUAL REPORTS 2007 and 2008.

²⁸⁸ Algerian delegate, Remarks at the U.N. Hum. Rts. Council 3d Sess. (Nov. 29, 2006).

²⁸⁹ *Id.*

²⁹⁰ “In August government forces launched a major offensive in North Darfur and Jebel Marra, which was accompanied by Janjawid raids on villages and continued at the end of 2006.” See, e.g., AMNESTY, *supra* note 22, at 242.

²⁹¹ Egyptian delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

²⁹² AMNESTY, *supra* note 22, at 244.

their neighbors.²⁹³ For example, Zambia said at the Special Session on Darfur that “despite the peace agreement, there is a lack of political will of the government of Sudan to protect civilians The government must care for the welfare of all people regardless of racial or religious background.”²⁹⁴ This sentiment was not often expressed by African States, and was buried in the vast amount of statements of support for the Sudanese government from this region.

B. The OIC

The OIC frequently aligned itself with the African Group’s statements on Sudan. It also employed the tactic of using large numbers of states giving similar comments during discussions in order to emphasize the collective position. At the Second Session, individual states from the OIC expressing confidence in the Sudanese government’s ability and willingness to improve the situation in Darfur included: Bahrain (Chair of the Arab Group), Tunisia, Morocco, Jordan, Malaysia, Senegal, Azerbaijan and Bangladesh. The tactical use of large numbers of states making broadly similar comments in order to emphasize a collective opinion continued to be employed at subsequent Sessions.

The OIC’s attempts to shift focus away from Darfur and onto other regions was especially apparent in terms of Israel and the Occupied Palestinian Territories. The OIC and its members chose to raise issues regarding Israel during discussions on Sudan, despite the fact that the disproportionate focus on this country by the Commission on Human Rights²⁹⁵ was a major cause of its diminished credibility.²⁹⁶ At the Special Session on Sudan, for example, the discussion became sidelined by members of the OIC, including the representative of Palestine, who accused Kofi Annan of being partial to the developed world, and the High Commissioner of ignoring the occupation of Palestine. Iran later spoke at length about the “60-year Holocaust in Palestine” and accused the Council of ignoring the conflict in this region.²⁹⁷

²⁹³ See Hum. Rts. Comm., *supra* notes 13 and 14.

²⁹⁴ Zambian delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

²⁹⁵ More than one quarter of all state-specific Resolutions passed by the Commission on Human Rights were against Israel.

²⁹⁶ “In larger freedom: towards development, security and human rights for all.” See The Secretary-General, *Report of the Secretary-General as a follow-up to the outcome of the Millennium Summit, A/59/2005/Add.1* (May 23, 2005); see also Kofi Annan, Secretary-General, Statement at Press Conference at U.N. Headquarter surging the Council to not focus on Israel alone (June 15, 2006).

²⁹⁷ Iranian delegate, Remarks at the U.N. Hum. Rts. Council 4th Special Sess. (Dec. 12, 2006).

The attempt to divert attention away from Sudan, where Arab militia²⁹⁸ were being accused of atrocities, and to shift the focus onto Israel, must be viewed in context of the fact that not only had a Special Session already taken place about Israel a month earlier,²⁹⁹ but also that there had been a Special Session on Israel four months prior to that.³⁰⁰ The fact that OIC members shifted focus onto Israel during a Special Session convened on Darfur revealed that the undercurrent of selectivity was still apparent within the main UN human rights body.³⁰¹ This was acknowledged by other States, for example, the UK, who commented, “When [the Council] focuses on the Israel and Palestine situation without focusing on other issues, some will wonder what this Council is doing.”³⁰²

C. Other Regional Groups

The EU consistently took a fairly neutral approach, commending Sudan’s efforts and cooperation, while simultaneously condemning the human rights situation in Darfur and calling for further action in this region. For example, after the Group of Experts’ report at the resumed 6th Session, the EU stated:

The report gives us some encouragement regarding potential positive results of this exercise. It also demonstrates clearly that much still has to be done. We welcome the open and constructive dialogue which has been taking place. However, little, or no, tangible impact has been reported of the few recommendations that have been implemented.”³⁰³

In commenting on the current state of the situation, they continued, “Some displaced persons have returned, but more have been displaced during this time . . . the Sudanese government is responsible for protecting its people, and they have not done so We must all help to stop these human rights violations.”³⁰⁴

GRULAC members took neither consistent nor uniform positions

²⁹⁸ Most notably the Janjaweed militia.

²⁹⁹ 3rd U.N. HRC. *Report of the 3rd Special Session*, at [3], U.N. Doc. A/HRC/S-3/2 (Nov. 15, 2006).

³⁰⁰ U.N. HRC, *Report of the 3rd Special Session*, at [3], U.N. Doc. A/HRC/S-2/2 (Aug. 11, 2006).

³⁰¹ Despite the underlying principles of universality, impartiality, objectivity and non-selectivity, amongst others. *See* G.A. Res. 60/251, ¶ 7, U.N. Doc. A/RES/60/251 (Apr. 3, 2006).

³⁰² United Kingdom delegate, Remarks at the U.N. Hum. Rts. Council 2d Sess. (Nov. 28, 2006).

³⁰³ Portuguese Delegate, Remarks at the U.N. Hum. Rts. Council 6th Sess. (Dec. 11, 2007).

³⁰⁴ *Id.*

regarding Sudan and the situation in Darfur. While individual states did, at times, call for action or condemn the government, none did so regularly over the two-year period. Many states remained silent during discussions. Cuba consistently aligned itself with the OIC and African Group's position and condemned the Sudanese government for its efforts and cooperation. This position contradicted comments of other GRULAC members during the same discussions.

Canada, whose statements were often joined by Australia and New Zealand, took a stronger approach than the EU or GRULAC members. Canada consistently condemned the Sudanese government for its role in the conflict, and called for action and implementation of recommendations. Canada often questioned mandate holders as to how assistance could best be provided to help the civilians in Darfur. It spoke out against weakening Resolutions and Decisions, and consistently called for the Council to take a proactive approach.

D. An Example of the Impact of Regional Alliances

The repercussions for a state that takes a stand against the OIC are revealed in the subsequent treatment of the offending state by the OIC and the African Group. This deterrent undoubtedly played a role in weakening the Council's Resolutions and Decisions. The Resolution passed at the resumed Second Session was weaker in its wording than Western States and others had urged.³⁰⁵ The EU's proposals to strengthen the language, including the use of the words "grave concern," were overwhelmingly defeated by the OIC and African Group.

To understand why the weakened text was adopted, it must be examined within the context of an incident during the resumed Session. Canada had been the sole opposing vote against the OIC's Resolutions on Israel.³⁰⁶ Many Western States chose to abstain from these votes. The OIC ignored the reasons given for Canada's "no" votes,³⁰⁷ and revealed its displeasure by using its collective weight to pass a last-minute motion postponing three non-controversial Canadian Draft Resolutions.³⁰⁸ The

³⁰⁵ See also *supra* Section 3.1.

³⁰⁶ Human Rights in the Occupied Syrian Golan, H.R.C. Res. 2/3, at ¶19, U.N. Doc. A/HRC/Res/2/3 (Sept.1, 2007); Israeli settlements in the Occupied Palestinian Territory, Including East Jerusalem, and in the Occupied Syrian Golan, H.R.C. Res. 2/4, at ¶36, U.N. Doc. A/HRC/RES/2/4 (Sept. 1, 2007).

³⁰⁷ Which included the fact that the resolutions were biased and only addressed the human rights violations of Israel, which contradicted the Council's principles of non-selectivity, universality and equality.

³⁰⁸ One of which was later negotiated to be presented the following day, and passed by consensus. Effective Implementation of International Instruments on Human Rights, H.R.C.

OIC's flexing of its collective muscle – alongside that of its usual supporters³⁰⁹ – sent a clear message to the Council. Therefore, when it came to the language of the Resolution on Darfur, the Western States stood little chance of convincing other countries to stand against the OIC and African Group.

CONCLUSION

This article has examined the impact of regional alliances on the discussions concerning Sudan, and the action taken by the Council regarding Darfur. The enormous amount of time devoted to Darfur both in specific and general discussions suggests that the Council knew that attention had to be devoted to this region. This arguably made the Council's lack of action worse in the eyes of the international community, and harmed the credibility of this new UN body.

Sudan's constant downplaying – or, at times, outright denial – of its role in the atrocities being committed in Darfur was consistently strengthened by the comments and actions of the African Group, the OIC, and states such as Cuba and China. These comments, alongside the silence of numerous other states, allowed for the Council's Resolutions and Decisions to be weakened in both language and substance, for recommendations to go unimplemented, and for the situation on the ground to continue.

Calls for further assistance in Sudan were a theme apparent within all discussions of Darfur. These masked the attempts to block intervention by regional groups. Furthermore, those calls for assistance often came from members of the alliances that were weakening attempts to intervene in Darfur. These calls often tried to blame the international community for the escalating and continuing crisis.

The OIC's tactic of ostracising countries that vocalised their disagreement with the OIC's collective stance³¹⁰ was employed to intimidate other non-OIC States and to ensure that they did not speak out against the alliance's stance. The OIC's collective position regarding this region contributed significantly to the lack of action concerning Darfur.

The behaviour of individual states and regional groups can be explained through political motivations and alliances. However, these explanations cannot be used to justify the consequences – that is, a lack of meaningful action, which translated into the allowance and neglect of continuing human

Res. 2/5, U.N. Doc A/HRC/RES/2/5 (Sept. 1, 2007). The other two were presented at a different Council Session. Resolution on Freedom of Expression and Opinion, H.R.C. L.44, U.N. Doc. A/HRC/2/L.44 (Oct. 3, 2006); Resolution on Impunity, H.R.C. L.38, U.N. Doc.A/HRC/2/L.38 (Oct. 3, 2006).

³⁰⁹ Including Cuba, China and Russia.

³¹⁰ See also Canada, Section 4.4.

2009]

Improvement on the Commission?

129

rights violations on the ground in Darfur. Support for the Sudanese government ultimately served to undercut the principles and mandate of the Human Rights Council.