



Arab Media Watch
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Monitoring Study:

British Media Reaction - Sudan's President & the ICC

Author:

Guy Gabriel - AMW adviser

Contact details:

Tel: 07815 747 729

E-mail: info@arabmediawatch.com

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Introduction

The recent application for the indictment of Sudanese President Omar al-Bashir caused a strong reaction in parts of the British media. The tone of the articles ranged from being staunchly supportive of the indictment, to opposition for pragmatic reasons.

During the period 13 - 27 July 2008, a total of 17 commentaries and editorials appeared in the British press on the subject. Five of the pieces were in the Guardian, four in the Independent, three in the Daily Telegraph, two in the Times, and one each in the Daily Express, Observer, and Mail on Sunday.

However, despite the strength of opinion expressed and the international implications of this affair, just over a third of the monitored daily and Sunday newspapers commented on it - seven out of 18 - and even then, almost a third of the pieces were in the Guardian alone. The Financial Times and online-only articles were excluded from this study.

Origins of the Indictment

The origins of the International Criminal Court and the legal process of indictment regarding Darfur were discussed by a few commentators.

The court "was set up in 2002 to bring to justice the perpetrators of precisely the sort of civilian massacre that we have witnessed in Darfur," said an Independent editorial (16 July). The situation in Darfur "was referred to the ICC by the UN security council in March 2005," Mark Lattimer, director of Minority Rights Group International, added in the Guardian (16 July).

Prosecutor Luis Moreno-Ocampo "has followed a highly conservative prosecutorial strategy," said Lattimer. "Although the prosecutor has the powers to initiate an investigation himself, all the situations other than Sudan that have come before the ICC have been referred by the national governments of the countries concerned."

The Security Council "unleashed" the investigation "to cover its failure to stop mass murder in Darfur," Geoffrey Robertson, Queen's Counsel, wrote in the Independent (18 July).

While he noted that then-US Secretary of State Colin Powell had called it genocide, Robertson acknowledged that "an investigation set up by [former UN Secretary-General] Kofi Annan doubted that the Bashir government had the requisite genocidal intent. However, its mass murder nonetheless amounted to a crime against humanity..."

Julie Flint and Alex de Waal, authors on Sudan, noted in the Observer that "every instrument short of military force has been used to try to make his government bend to the international will" (13 July).

Descriptions of the Move to Indict

The International Criminal Court prosecutor's decision to seek charges against Sudanese President Omar al-Bashir is "momentous" and "unprecedented", wrote Daily Telegraph executive foreign editor Con Coughlin, who saw it as "an important test case" (18 July).

He added that "the fact that the ICC is prepared to hold heads of state responsible for their actions is a move in the right direction...imagine the trouble the world would have been spared if the ICC had been around in the 1980s and 1990s."

The application for an arrest warrant is "a bold step," and "a recognition of the suffering Darfuris have endured at the hands of Sudanese forces and allied militias and it strikes an important blow for international justice," wrote the Independent's Africa correspondent Steve Bloomfield (16 July).

However, "it also carries a massive risk, which some analysts believe could pave the way for further problems and slaughter."

In the same newspaper, Geoffrey Robertson, Queen's Counsel, described it as "an anxious but important step for international justice" that "will test not so much the fledgling International Criminal Court...as the integrity of the UN Security Council" (18 July).

A Times editorial described the move thus (24 July):

"To indict Mr Bashir while still in office would break new legal ground. It would put all serving heads of state at risk of being grounded by indictments, whether serious or frivolous, and it would put the court's proceedings at grave risk of being skewed by politics."

The Prosecutor

Comment was passed on the prosecutor of the International Criminal Court, Luis Moreno-Ocampo, some of it praising him and his role, but some sharply critical.

He is "a careful, respected lawyer with a fine record in prosecuting inhumane Argentinean generals and also in handling defence cases," Geoffrey Robertson, Queen's Counsel, wrote in the Independent (18 July).

He added that "the Sudanese diplomats who have been defaming him this week are a disgrace," and described Sudanese claims that the ICC has no jurisdiction over members of its government as "a legal nonsense."

Moreno-Ocampo "is a prosecutor, not a diplomat, and the credibility of the ICC depends on that distinction being maintained," Mark Lattimer, director of Minority Rights Group International, wrote in the Guardian (16 July). "As well as requiring any arrest warrant to be approved by a panel of judges, the ICC's statute provides extensive avenues to challenge a decision not to prosecute." He continued:

"The prosecutor's move was nonetheless bold. In charging Bashir with genocide, together with war crimes and crimes against humanity, he has thrown at him the most resonant crime in the ICC's book, if not the easiest to prove."

However, John Laughland in the Mail on Sunday was critical of both the ICC and Moreno-Ocampo (27 July):

"The indictment of a sitting president was intended to show that no one was beyond the reach of international law. We should all be worried if such power becomes a law unto itself but, unfortunately, it already has...the lawyers who work for these tribunals enjoy precisely the same immunity which they seek to deny to politicians - an unscrupulous prosecutor or judge cannot be prosecuted."

Laughland described an incident the week before in which Moreno-Ocampo had been caught "withholding information" passed to him by the UN in secret that would exonerate defendant Thomas Lubanga, a Congolese military and political leader, in another case. Laughland reserved his sternest criticism for this incident:

"In other words, the prosecutor and the UN were conspiring to imprison a man on the basis of a lie...So instead of resigning or being punished, the prosecutor was allowed to carry on as if nothing had happened. He simply launched an even more high-profile indictment - that of al-Bashir."

The Accused

Only a handful of commentators gave a description of Sudanese President Omar al-Bashir. Julie Flint and Alex de Waal, authors on Sudan, wrote in the Observer (July 13):

"Some commentators use the word 'evil' to describe Bashir. This is a simplification. Bashir is a pragmatist who responds to incentives. He negotiated an end to the 20-year civil war with marginalised southerners when convinced of the benefits of peace. But he is also a proud and stubborn man, who responds to affronts to his dignity with rage."

They continue:

"In his 19 years in power, Bashir has presided over a regime marked by recurrent massacre and savage repression. His ruling security clique is weak but united by fear of what may happen if it loses power."

A Times editorial stated that "the man accused of attempting to exterminate whole tribes in Darfur...whose stock in trade is brazen denial...is not a man of peace" (24 July).

Al-Bashir is "a dour, heavily-built soldier, notable for his lack of charisma," who "turned Khartoum into a haven for anti-Western radicals," wrote Daily Telegraph diplomatic editor David Blair (15 July).

"But Mr Bashir was never animated by Islamic zeal or ideological fervour. All he wanted was to hold power. In particular, he wanted to ensure that the Nile Valley's Arab tribes, who had ruled Sudan since independence from Britain in 1956, kept their monopoly of wealth and influence. When he grasped that Sudan's pariah status threatened this position, he ... concluded a peace deal with black African rebels in the South who had waged an insurgency for decades."

Al-Bashir's response to the start of hostilities in Darfur 2003 was "draconian," wrote Blair. "By arming and training brutal Arab militias, he hoped to secure his position by inflicting terrible punishment on the insurgent tribes."

Express columnist Frederick Forsyth offered his opinion in a sentence (18 July):

"Three cheers for the International Criminal Court for lambasting a tyrant, the genocidal Omar Bashir of Sudan who masterminded the mass slaughter in Darfur."

The Evidence

Mark Lattimer director of Minority Rights Group International, writing in the Guardian, (16 July) quoted the International Criminal Court's prosecutor Luis Moreno-Ocampo in justifying his decision: "I don't have the luxury to look away. I have the evidence."

Few commentators were precise about the evidence referred to, although Geoffrey Robertson, Queen's Counsel, wrote in the Independent that Moreno-Ocampo "has gathered much more evidence than was available to Kofi Annan's inquiry" that "demonstrates a deliberate policy of tribal destruction, devised and ordered by the President himself" (18 July).

An editorial in the Times (24 July) suggests the evidence against President Bashir is "compelling" and incriminating: "there is a small mountain of evidence to suggest he has personally orchestrated the horror visited on Darfur since 2003."

The Independent's Africa correspondent Steve Bloomfield took a more measured approach, writing that the prosecutor "must produce evidence proving not only that Bashir was responsible for the actions of his forces in Darfur but that his intent was to 'destroy, in whole or in part' the Fur, Masalit and Zarghawa peoples" (16 July).

Bloomfield foresaw difficulty, insofar as unlike Nuremburg, "there is no such paper trail in Darfur."

There is "still a long way to go before Mr Bashir finds himself standing trial," and "so far the prosecutor has had to rely on BBC footage of rape victims recounting horrific stories of their treatment at the hands of the government-funded Janjaweed militias," wrote Daily Telegraph executive foreign editor Con Coughlin (18 July).

Therefore, "putting together a case that would stand scrutiny under international law is another matter, and would require the same painstaking field work that brought to trial those responsible for the war crimes in the Balkans in the 1990s."

Like other commentators, Adrian Hamilton in the Independent (24 July) notes difficulties in taking things further and producing hard, fast evidence. He writes:

"The whole world, or at least the Western part of it, wants those responsible for the appalling atrocities in Darfur to be brought to book. But to indict the Sudanese president faces all the problems of establishing proof of direct responsibility, let alone the problems of extricating him from his home country and endangering the whole peace process."

This brings on a moment's introspection for Hamilton, who asks:

"What is it that we want? To wreak vengeance, to hold to account, to make an example of, or simply to satisfy our own conscience?"

Nonetheless, the Independent wrote in an editorial (16 July):

"You can call it genocide or just plain slaughter. But the reality is there for all to see, and the complicity of the Sudanese government has been attested by virtually everyone who has been there."

There is corroboration from an editorial in the Guardian (16 July):

"No one seriously disputes that Omar al-Bashir, the president of Sudan, has presided over a regime which regularly resorts to massacre and repression. Not just in Darfur, in western Sudan, but in the east and in its armed support for rebellions in Chad and the Central African Republic."

Past Experience

Mark Lattimer, director of Minority Rights Group International, noted in the Guardian the examples of two other cases (Slobodan Milosevic of Serbia and Charles Taylor of Liberia) of serving leaders having faced "international indictment" (16 July).

"The diplomatic controversy quickly subsided and the indictees soon found their national power base crumbling away. Politicians do not like to be led by an international pariah, even if, or especially if, they are themselves implicated in his crimes. They were both inside a prison cell within three years."

To date, "most of the prosecutions brought by the [International Criminal Court] have related to rogue militia leaders" and by attempting to bring charges against a serving head of state, it is "a move that, if successful, could give the world's despots a few sleepless nights," wrote Daily Telegraph executive foreign editor Con Coughlin (18 July).

The US

A couple of commentators noted the role of the US in the affair. In referring Darfur to the International Criminal Court, "the Bush administration abandoned its implacable and irrational opposition to the ICC to allow the reference to be made," Geoffrey Robertson, Queen's Council, wrote in the Independent (18 July).

However Simon Tisdall, assistant editor and foreign affairs columnist at the Guardian, noted more ambiguity, suggesting that "even the Bush administration, famous for its black-and-white view of the world, seems to be in two minds. It supports the court's right to bring the indictment. But it does not recognise the court per se" (15 July). Tisdall concluded that "little wonder the outlook is hazy."

Sudanese Reaction

Some commentators noted Sudanese reaction to the affair. The Times described how when the citation against President Omar al-Bashir was announced, "the streets of Khartoum filled with pro-Government protesters denouncing both the court and aid workers whom they accused of fabricating evidence against their leader" (24 July).

Geoffrey Robertson, Queen's Council, wrote in the Independent (18 July):

"President Bashir is not at this stage prepared to co-operate: he falsely claims that the court lacks jurisdiction."

This thought was echoed by Simon Tisdall, assistant editor and foreign affairs columnist at the Guardian: "many in Khartoum see the [International Criminal Court] as an American-led conspiracy" (15 July).

Robertson continued:

"His diplomats vilify the prosecutor while his ministers make bloodthirsty threats of reprisals against NGOs and indeed against the suffering people of Darfur."

However, Robertson highlighted one avenue open to the Sudanese, a "perfectly proper counter-attack", explaining that "they can send lawyers to The Hague to contest the charges at the pre-trial hearing that must now be held before this prosecution can proceed."

Despite "fears that [al-Bashir] might respond like a wounded animal, it seems more likely that he will follow a diplomatic path, in the short term at least," wrote the Independent's Africa correspondent Steve Bloomfield (16 July).

Supporters of Sudanese Government

Several commentators noted a certain amount of support that the Sudanese government has among the international community, notably from China. Geoffrey Robertson, Queen's Council, noted in the Independent (18 July):

"China is Sudan's sponsor and protector, and it could not escape international obloquy, just before the Olympics, if it failed to restrain this client state."

We "should not be surprised at the...news that China opposes attempts to bring Sudan's President Omar al-Bashir to justice over his government's crimes in Darfur," wrote the Daily Telegraph's China correspondent Richard Spencer (16 July).

Simon Tisdall, assistant editor and foreign affairs columnist at the Guardian, believed this international support is crucial to the Sudanese president: "the chances that Bashir will be able to shrug off the whole affair are enhanced by Zimbabwe-like divisions in the international community."

"Russia, China and the African Union opposed the [International Criminal Court's] action. And some countries claim to discern an anti-African bias. This, they say, is 'white man's justice' visited upon non-whites" (15 July).

The Independent's Africa correspondent Steve Bloomfield also highlighted a perceived 'anti-African bias' (16 July):

"China, Sudan's biggest ally on the UN Security Council, has already voiced its disapproval of the charges and foreign ministers from the Arab League will meet on Saturday to discuss their response. Their backing will be crucial, as will the reaction from Africa. While the majority of African states have signed up to the ICC, there is unease that since the court was established in 2002, it has charged only suspects in Africa."

However, on the subject of bias or double standards - particularly from "the political correctness brigade, particularly in Europe" - Daily Telegraph executive foreign editor Con Coughlin dismissed the argument that "if charges can be brought against African despots, they could also be brought against alleged Western wrong-doers such as Tony Blair and George W. Bush" (18 July).

"To equate the actions of Western leaders, taken in the interests of national security, with the evil actions of genocidal dictators is a fundamental misunderstanding of the ICC's role. The ICC's raison d'être is to discourage acts of criminality, not acts of war, and Sudan's conduct in Darfur, where it has been responsible for the deaths of more than 200,000 civilians and the forced evacuation of about two million people from their homes - Rwanda in slow motion - is undeniably the worst crime against humanity committed so far during the 21st century."

Coughlin viewed the possible indictment of al Bashir as "an important part of creating a better and safer world for us all."

Predicted Consequences

The area in which commentators had most to say was what they saw as consequences of the affair, though they disagreed in their analyses of their severity, with others still content to 'sit on the fence' by outlining arguments for both sides.

For the Indictment

"If the warrant is issued, what will happen? The security council is unlikely to agree immediate enforcement action, with a veto expected particularly from China," Mark Lattimer, director of Minority Rights Group International, wrote in the Guardian (16 July).

"Sudan will go on denouncing the ICC and no doubt will also continue its policy of obstructing the deployment of the joint UN-African Union peacekeeping force in Darfur."

However, President Omar al-Bashir "will come to understand that the independence of the [International Criminal Court] from the UN means that its decisions cannot just be rescinded by his allies on the security council," added Lattimer.

"Soon, not just Bashir's enemies but his friends too will realise that he is damaged goods...He is unlikely ever to recover."

Geoffrey Robertson, Queen's Council, noted in the Independent a duty to protect Darfuris, but did not say how: "It would be irresponsible to have set this procedure in motion and yet fail to protect those who are threatened because of it" (18 July).

"A few NGOs and many diplomats fear that taking the ICC route might derail a fragile peace process...History teaches that peace, without justice for the perpetrators of genocide, is likely to be very short-lived."

A first-hand account of her experiences in Darfur by Halima Bashir in the Times (14 July) was unequivocal:

"It means that justice may finally be about to be done for the genocidaires in Khartoum."

A Times editorial came out in favour of the citation (24 July), but in a qualified sense that acknowledged risks to Darfur:

"Justice, the long-term stability of the region and the reputation of the ICC all demand that he answer any charges against him in due course...but more immediate considerations require the ICC to proceed carefully. The aid community in Sudan, a lifeline for millions, feared a violent backlash. It has not come, but that danger will return if a full indictment is issued while Mr Bashir remains in office. Darfur's refugees themselves are similarly at risk: a full-scale resumption of ethnic cleansing is entirely possible should Mr Bashir decide his current diplomatic offensive is pointless."

The Times advised that "the case against Mr al-Bashir should be assembled rigorously. But his prosecution should await his departure from office." However, this qualification did not alter the newspaper's overarching position:

"Sovereignty is not licence. No ruler has a right to inflict such a catastrophe. Where any does, the international community must stop him."

Against the Indictment

Julie Flint, author on Sudan, took a more practical approach in the Guardian (16 July), suggesting the onus is now on International Criminal Court prosecutor Luis Moreno-Ocampo, who she says must now defend his position:

"First, to the pre-trial chamber of the ICC and the court of world opinion...Then, if Bashir is ever arrested, in a court of law."

She noted the precariousness of the prosecutor's position:

"If Bashir is found guilty and convicted, it will be a victory for the ICC (if not necessarily for peace in Sudan). But if he continues in power, and possibly is re-elected as president next year, it will not only be a snub to the ICC. It will be an advertisement for impunity."

Another piece by Flint, co-written with Alex de Waal in the Observer (13 July), sounded a note of alarm:

"The immediate dangers are easy to foresee. The very people the ICC seeks to defend - the survivors of the Darfur war - are the most vulnerable to whatever steps the regime takes in its fightback...As organised hysteria mounts, UN peacekeepers might not be the only targets. Relief workers could be under threat, too."

The authors continued:

"Darfur's rebels will be emboldened, perhaps sufficiently to launch new military offensives to which the regime will respond as it has responded ever since it seized power - with massive violations of human rights."

Flint and de Waal asked:

"Who then will protect the victims and the vulnerable? Who will police the ceasefire between north and south? What could compel Bashir, hunted by the ICC, to comply with his promise to hold national elections that could unseat him in 2009?"

They added that "the price of sanctions, isolation and conflict will be borne by the Sudanese people...The chief prosecutor's timing could not be worse." They concluded that "in the interests of the people of Sudan, Ocampo should reconsider. It is not too late."

Sitting on the Fence

A Guardian editorial took a non-committal position, writing that "forceful arguments exist on both sides" (16 July).

It added that "authoritative voices predict the indictment could doom next year's elections and make millions of Sudanese hostage to al-Bashir's sense of wounded pride...So why indulge in a judicial charade that will not deliver justice but could pose a significant additional risk to an aid operation which is already struggling?"

However, the editorial wrote that "the counter arguments are also persuasive," noting that International Criminal Court prosecutor Luis Moreno-Ocampo "is not a lone crusader.

"If we agree that no one should enjoy impunity for crimes, and so support such concepts as universal jurisdiction (including for our own leaders) then this indictment is a big step towards breaking down national barriers and supporting the international rule of law."

An Independent editorial (16 July) took a pragmatic approach, asking:

"What good will an international case against Bashir do for the poor victims of this terrible and remorseless war? Issuing international warrants for arrest against the Sudanese leader...may make the West feel better about its own failure to do anything to stop the death and destruction in the region. But moral satisfaction in the Hague won't do much for the dying in Darfur."

The piece continued:

"Indeed, it could be counter-productive, as the regime in Khartoum responds by lashing out against what it regards as its Western persecutors, forcing the UN to withdraw non-essential staff and the aid agencies to curb their activities."

Although it opined that "the threat of violence should not be allowed to stay the hand of justice," it added that "the reality of this conflict is that, short of invading the country, the outside world has to depend on Sudanese co-operation to bring a measure of peace to Darfur. And the further reality is that this is a civil war in which demonising one side only encourages the other side to push its claims even more violently."

The editorial admonished the West's role:

"The West's responsibility is not to grandstand for the sake of its own self-esteem but to help as best it can the victims of continuing conflict...Enough innocent blood has been shed already in Darfur. The concentration now should be on peace talks, however loathsome some of the participants."

However Simon Tisdall, assistant editor and foreign affairs columnist at the Guardian, writing after some of the dust had settled (23 July), opined that the indictment of Sudan's president on genocide charges "was widely dismissed in Africa as a stunt that would lead to nothing. That conclusion now looks a little premature."