

Title: The annoyance of International justice

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Summary & Comment: On July 12 a three-judge panel of the International Criminal Court issued a warrant for the arrest of Sudan's brutal strongman, President Omar al-Bashir. The new charges are for three counts of genocide in Darfur, adding to the many counts of war crimes and crimes against humanity for which al-Bashir was charged by the ICC in March 2009. These recent charges are without precedent in the pursuit of international justice. As the *Washington Post* noted, this was 'the first time the Hague-based court has accused a sitting head of state of committing the most egregious international crime'. GK

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On July 12 a three-judge panel of the International Criminal Court issued a warrant for the arrest of Sudan's brutal strongman, President Omar al-Bashir. The new charges are for three counts of genocide in Darfur, adding to the many counts of war crimes and crimes against humanity for which al-Bashir was charged by the ICC in March 2009. These recent charges are without precedent in the pursuit of international justice. As the *Washington Post* noted, this was "the first time the Hague-based court has accused a sitting head of state of committing the most egregious international crime."

So what was the response of President Barack Obama's special envoy for Sudan, former Air Force General Scott Gration? "The decision by the ICC to accuse Sudanese president Omar al-Bashir of genocide will make my mission more difficult.." This seems an extraordinarily cynical response to a critical moment in the effort to end impunity for atrocity crimes, precisely the impunity that sustains human suffering and destruction in Darfur. So, we may wonder, just what is General Gration's job that it is made "more difficult" by such action? How can these historic first steps, pursuing international justice in the wake of massive ethnically-targeted human destruction, make his task harder? And even if harder, what does Gration have to say to the millions of Darfuris who enthusiastically support the ICC and its actions against al-Bashir? Here we must bear in mind the strategic decision that lies behind Gration's diplomatic engagement with Khartoum over the past year and a half, both in responding to Darfur and to the brewing crisis in southern Sudan, which holds a crucial self-determination referendum in January 2011. Gration has from the beginning determined that he will accommodate, reward, and accept as fully legitimate negotiating partners the Khartoum regime headed by al-Bashir and his cabal of fellow *génocidaires* (it is only a matter of time before other senior figures in the regime are charged by the ICC with similar crimes). Gration's self-professed strategy is an effort to secure their goodwill and cooperation. Yet he is undeterred by the fact that the regime remains as obdurate as ever, and has repeatedly, consequentially violated the much-touted cease-fire agreement contained in the feeble document Gration helped cobble together this past February—an agreement between only one rebel party and the regime, with no provision for assistance, compensation, power-sharing, or justice for the people of Darfur.

In an especially revealing example of his policy of accommodation, Gration declared shortly before the April national elections in Sudan-which saw al-Bashir win easily-that they would be "as free and fair as possible." Of course, as numerous reports have demonstrated, the vote was an electoral travesty, with rampant fraud and gross manipulation of votes and vote counting. But by granting a US imprimatur for this election, Gration effectively strengthened Khartoum's hand and weakened the political and negotiating position of Darfuris and others opposed to the regime. To the extent the elections gave a thin veneer of respectability to continued tyranny by al-Bashir and his cronies, the regime was bolstered, especially *vis-à-vis* the Arab League and African Union, where democratic members are a rarity. By contrast, the marginalized populations of Sudan-north and south-feel betrayed by Gration and have lost nearly all confidence in him.

In another example of destructive accommodation, Gration has asserted that humanitarian resources have been replaced in Darfur following Khartoum's March 2009 expulsion of thirteen distinguished international humanitarian organizations, which represented at the time roughly fifty percent of aid capacity. This replacement simply has not occurred, and Gration's assertions to the contrary work to obscure the massive humanitarian crisis that is presently growing in Darfur. Gration has consistently outraged humanitarians with his high-handed and grossly ill-informed actions and pronouncements. As one seasoned humanitarian program officer, with major responsibilities for Sudan, recently told me: "It is the commonly held opinion [among humanitarians] that Gration has been a disaster for Sudan in general and Darfur in particular." Much of the shortfall in humanitarian capacity in Darfur continues to be the direct result of obstructionism and deliberate bureaucratic delays on the part of Khartoum. For this Gration bears heavy responsibility since he refuses to make the issue a priority and refuses to pressure the regime accordingly. Here again accommodation and appeasement lead not to improved conditions in Darfur but to a bolder and more intransigent regime, intent on manipulating critical food and medical aid for purposes of human displacement and destruction. The larger goal is of course to force the entire international humanitarian operation in Darfur to withdraw-to remove the eyes and ears that have kept Darfur from becoming an invisible genocide. As part of this ambition, Khartoum has orchestrated an acceleration of violence and insecurity in the region, both through its own military and intelligence forces as well as militia proxies. But rather than pressure Khartoum over its barbarous actions, Gration seems more interested in threatening Darfuris. This past March the US special envoy took the extraordinary step of declaring that there will be less US attention to the crisis and peace negotiations-less diplomatic "bandwidth"-if "a full-fledged [Darfur] peace agreement is not reached before Sudan elections scheduled for mid-April. [.] 'The are going to be a lot of things that are keeping us from focusing on Darfur,' [Gration] told reporters here [in Nairobi]".. In case anyone failed to get the message, Gration also declared that, "In the next two weeks I think we are going to see a real big focus on the election. There is not going to be a lot of bandwidth to be doing Darfur and negotiations [after the election]."

Amidst this jumbled commentary, the threat was clear: if the fractured rebel movements did not immediately conclude a deal with Khartoum, with or without the participation of Darfuri civil society, then the US would be less committed to the resolution of Darfur's vast crisis. No matter that Gration had himself foolishly and counter-productively guaranteed a peace agreement by the end of 2009; the US special envoy for Sudan, and the administration he represents, now have more pressing business and only limited "bandwidth" for Darfur. It was precisely such deadline-driven negotiations that produced the thoroughly disastrous "Darfur Peace Agreement" in Abuja (Nigeria) in 2006-a diplomatic failure that has clearly not registered with General Gration.

In the face of genocide charges against al-Bashir, Gration's dismay seems entirely misdirected, and indeed even the US State Department felt obliged to declare that "We continue to support this [ICC] process. We have strongly encouraged Sudan to cooperate fully with the ICC.. [We] believe that [al-Bashir] should present himself to the ICC and answer the charges that have been leveled against him.."

Ludicrously, in light of Gration's very public statement, the State Department also tried to walk back his comments: "Scott Gration has repeatedly told Sudanese officials that at some point, President Bashir has to present himself to the ICC and be held to account." But this is simply not credible, not when Gration himself declares of the new ICC charges of genocide that they "will make my mission more difficult." Putting the matter even more bluntly, Gration declared "we need Bashir." Of course there are many who believe that "getting Bashir" to cooperate is much more a matter of exerting sufficient international pressure

on his regime than rewarding it with Gration's now notorious "smiley faces and gold stars"-and that the ICC genocide warrant is an important part of that pressure.

Gration is reported to be privately seething at his critics, including this writer, going so far as to declare (according to a highly reliable source in the humanitarian community) that he could "solve" the Darfur crisis if not for activists: "My colleague overheard Gration saying that he could 'solve' the Darfur problem if it weren't for those damn NGOs (especially the activist NGOs)."

In the end this is simply another indication of ignorance on Gration's part. He apparently believed that he could expect a free ride from "activist NGOs" and everyone else who has taken the Darfur genocide seriously since it began in earnest in spring 2003-over seven years ago. But with the human stakes so high, only a fool would expect to escape close scrutiny and honest, unflinching criticism. With no background on Sudan, no diplomatic experience, a perverse stubbornness, and a fundamentally flawed negotiating premise, Gration has failed and survives in his position only because President Obama-with whom he reportedly has a very close relationship-will not demand his resignation. But for the moment it seems important to contemplate the spectacle of an American diplomat publicly complaining that his job has been made more difficult because an international tribunal has issued an arrest warrant for the crime of genocide. If this is, as some suggest, Obama's "Rwanda moment," then he is being betrayed in deepest consequence by his special envoy for Sudan.

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