

10-02-05 Justice for Darfur Africa

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Last week, a United Nations commission of inquiry strongly recommended prosecutions at the International Criminal Court for those responsible for the killing fields of Darfur. The commission emphasized that alternatives to the ICC, as proposed by Washington, would be cumbersome and expensive. Britain's ambassador to the UN, Sir Emyr Jones Parry, rightly noted that the court, set up to prosecute genocide and crimes against humanity, is "tailor-made" for cases such as Darfur. Such welcome statements make it sound as if Britain's support for the court remains unswerving. In reality, a subversive little three-letter word, designed to please the Americans, is never far away.

The Government wants Darfur to be referred to the court - but only if "consensus" can be achieved. In the words of Jack Straw, who will again discuss the issue with the US Secretary of State Condoleezza Rice at an EU-US meeting on Thursday: "Our first preference is for a referral to the ICC. But this is a decision for the whole Security Council."

The talk of "consensus" and "whole Security Council" sounds cozy. But it masks the reality: UK readiness for everybody else to give up on the available, recommended, solution while one permanent member of the Security

Council moves not an inch. That is hardly consensus.

European diplomats have told journalists of their dismay at the British reluctance to back a strong EU statement in favour of the court as the best place to ensure justice for Darfur's victims. In Brussels last week, Britain repeatedly resisted calls for the strong, no-ifs-and-buts, statement that other governments were pressing for; No sign that Britain was interested in "consensus" there. The fate of the people of Darfur comes second, it seems, to the sensibilities of President Bush.

Britain supports an ICC referral as long as America does not disagree. But US does disagree - vehemently. Washington has attempted to throttle the fledgling court ever since its birth in 2002, arguing that international prosecutors might launch unfounded prosecutions against US citizens. In reality, innumerable safeguards exist to prevent malicious prosecutions - and these concerns are in any case irrelevant in Darfur, where no US citizens are involved. Pierre Prosper, US ambassador at large for war crimes, admits that the opposition to a referral is not about justice, but merely about ideology: "We don't want to be a party to legitimizing the court."

Washington's position is riven with contradictions. The

US has spoken out strongly on Darfur. In its desperation not to accept the obvious and already-existing venue for prosecutions, it grasps for half-baked alternatives. It has suggested the creation of yet another ad hoc tribunal - similar to those created, in a pre-ICC era, to prosecute genocide in Rwanda and the Balkans. And yet, the ICC was set up to avoid the complications associated with a myriad of different tribunals. A new tribunal would also involve delays - and thus, potentially, more deaths. Even diehard US opponents of the court sometimes admit that it does not make sense to "cut off our noses to spite our face" on the issue of Darfur justice. And President Bush, contrary to conventional wisdom, understands the need to give way when there is no alternative.

Last June, America was full of bluster that it would boycott all UN peacekeeping operations unless it gained the renewal of a resolution that guaranteed special immunity from prosecution. But when many governments made clear that they would refuse to vote for the desired US resolution, they called America's bluff.

For what were described as "tactical" reasons, the UK indicated its readiness to back Washington's cynical resolution; fortunately, the UK was in a minority. The US duly withdrew its resolution - and

the dire threats dissipated.

The stakes today are even higher than last June. If the ICC is sidelined on such an important case as Darfur, the court itself will be in danger of seeming superfluous in the years to come. In short: If not now, when? Tony Blair is said to be the one world leader to whom George Bush listens. The UK is thus in a position to make a crucial difference.

A more robust British stance will not, of course, ensure referral to the ICC. The US might yet wield its veto at the Security Council. That would, however, be embarrassing for an administration that has declared the crimes to be genocide - and doubly embarrassing if Russia and China are ready to stand aside. Because Sudan has not ratified the court treaty, any referral to the court must, in the case of Darfur, go via the Security Council, rather than being initiated directly by the court itself in The Hague.

There can be no justification for letting ideology take precedence over the needs of the people of Darfur. Washington does not even need to cast a vote in favour of the court - it merely needs to withhold its veto, by abstaining on the resolution. There can be little serious argument over which court will deliver justice best, most simply and most quickly. This is a historic opportunity. It cannot be ignored.