November 15, 2007

Sudan, Darfur, and Duke's Investment Policy

Final Report of the President's Advisory Committee on Investment Responsibility (ACIR)

MEMBER LIST

Peter Feaver	Faculty
Tracy Futhey	Administrator
Runeet Kishore	GPSC
Ralph McCaughan	University Counsel's Designee
Tori Nevois	Deputy Treasurer
Paul Slattery	DSG
Martin Smith	Faculty
Laura Wellman	Alumna
Gordon Williams	Administrator
George Tauchen	Faculty and chair
Jim Speckart	Assistant

CONTENTS

I Background

In March 2007, the Provost received correspondence from a group of Duke students representing a number of Duke students and student groups. The topic was the elimination of any financial relationships of Duke University with a designated list of companies doing significant business with the Sudanese government. The Provost, as chair of the President's Special Committee on Investment Responsibility, scheduled a meeting with the students, and asked DUMAC for an examination of its holdings. DUMAC reported $560,000 in direct holdings in one company that had recently been sold. The Provost and students met on April 2.The students were pleased to learn that Duke had no current direct holdings relative to Sudan at the time, and they promised to get back to the Provost in writing. The students wrote a letter of April 13, 2007, requesting various actions regarding Sudan, and the letter was endorsed by a number of groups of concerned members of the Duke community.

The students' letter of April 13 instigated action by the President's Special Committee on Investment Responsibility, as per the protocols set forth by the Board of Trustees in 2004. The letter arrived near the end of the academic year, and it was impossible for that committee act immediately given end-of-semester commitments and summer travel schedules. On August 16 that committee met to review the letter, and it determined the matter should be referred to the President's Advisory Committee on Investment Responsibility (ACIR). The Provost's letter of August 28 to the ACIR chair officially set that committee into action. An excerpt from that letter defines the ACIR's mandate:

> **In light of these considerations, the Special Committee on Investment Responsibility recommends that the Advisory Committee on Investment Responsibility be convened to address the following issue: should a recommendation be made to the President that the Duke University Board of Trustees consider requiring DUMAC to undertake no direct investments in any company on the list of companies previously identified as being heavily engaged in business with the government of Sudan and as listed on attachment 4 (and any subsequent updates of that list)?**

The ACIR held its first meeting on September 9. It reviewed the protocols from the Board of Trustees, discussed some other background details, and it undertook a very brief discussion of the Sudan/Darfur issue. Of particular note was the Board's narrowly defined protocol for the ACIR. Specifically, the Board indicates that

1. "*The chair* [of ACIR] *shall take as an agenda item **only** matters referred by the President or the SPC.*" (emphasis added).

2. *The ACIR makes a recommendation to the President. Voting members of ACIR who hold divergent views may submit them in writing with the ACIR's recommendation to the president.*

The ACIR decided to hold a one-day set of fact-finding sessions on October 16. Depending upon the outcome it would deliberate further and then take a final vote on the issue as defined by the President's Special Committee.

The agenda for the fact-finding sessions on October 16 is below:

Closed Sessions, Allen Board Room

Time	Speaker
1:15 - 2:00	David Shumate from DUMAC
3:00 - 3:45	Stephen Smith, Duke professor and expert on Darfur and Sudan
4:00 - 4:45	Andres Luco, representative for student activists on Darfur/Sudan

Public Forum, Social Sciences Room 139

6:00 - 7:30 Public Forum

Before the sessions, the chair met with Frederick "Fritz" Mayer, an informed and concerned faculty member, and Robin Kirk, the Director of the Duke Human Rights Center. Professor Mayer was very helpful in providing background history on Duke and socially responsible investing, and Ms. Kirk was especially helpful with information about human rights issues, and put the ACIR in contact with Professor Smith of Sanford, whose remarks were especially helpful during the October 16 sessions. The chair also met with each speaker just to let them know the format and context of the October 16 events.

The Public Forum was announced by e-mails to relevant members of the Duke community with a request to forward the information on to others. It was also advertised in three issues of the Duke Chronicle and on the Duke news website. Finally, it was discussed in an editorial in the Chronicle the day before the Forum.

The daily sessions were extremely helpful. About 12-15 persons attended the forum, which was lively and informative.

Below is a summary of the ACIR's fact-finding efforts along with so information obtained by committee members in various other contexts. The bulk of the material comes from the October 16 sessions and forum.

II Sudan and Darfur

Sudan consists of a relatively small central region that includes the capital Khartoum and much larger bordering regions and provinces. (A map is included in the Addenda.) It is an Islamist state with significant ethic and religious minorities in the outlying regions. There is a history of tension, including racial and sectarian conflicts, between the central region and the outlying regions. The tension is now is exacerbated because so much of the revenue from oil and other resources flows into the central region and little is allocated to the outlying provinces.

The tension between the central and outlying regions has led to civil strife, and the central government has a history of dealing with insurrections and other rebellious activities. From the 1980s until earlier this decade, there was an extensive and very harsh civil war between the Islamist central region and the largely Christian southern region that killed up to 1.5 million people. Like in Darfur, mass murder and ethnic cleansing campaigns occurred in this war. The central/south civil war was settled in early January 2005, after extensive negotiations brokered by the UN and the United States between the rebels and central authorities. The settlement of this civil war is considered one of the major foreign policies successes of the first term of the Bush presidency.

While there has been unrest in Darfur since the mid-1980s, the current conflict emerged from the settlement process for the central/south civil war. Darfur, which is on the western side of the central region, was left out of the agreement, and therefore it would share in little or none of the southern oil revenues under control of the central government. A west/central rebellion broke out into the conflict that has received such enormous international attention.

To put down the rebellion, the government of Sudan employed various militias as proxy armies, including the notorious Janjaweed. That tactic has been employed before by the Sudanese government and many other governments as well, in various conflicts. It is important to keep in mind that the Darfur conflict is primarily political, not racial. For hundreds of years, Darfur was an independent Islamic sultanate until annexed to Sudan by the British in 1916, out of fear it would enter the First World War on the side of the central powers. The Darfur conflict is best characterized as a political rebellion that feeds on racial and cultural differences between lighter skinned Arab Muslims and darker skinned African Muslims. There is no denying that the use of proxy armies led to the large scale deaths in the Darfur conflict.

One could give a misguided argument that the government of Sudan could be absolved of blame on the excuse that the deaths were a byproduct of a civil war in which the government employed a clumsy tactic in an effort to put down an internal insurrection. This argument would say that since the army of Sudan includes many Darfuri, the Sudanese government had limited official military options to fight the civil war.

This argument does not hold up under scrutiny. From past experience, the Sudanese government knew that the proxy armies would employ despicable tactics, and that civilians would be killed, not only as inescapable accidents of military conflict, but also out of deliberate large-scale terrorism. Furthermore, it knew that as this offensive ended, chaos and anarchy would emerge as fractious conflicts broke among loosely allied rebellious factions.

The culpability of the Sudanese government for the ghastly events in Darfur is undeniable. More than two hundred thousand people have been killed, and the Sudanese government knew this outcome would occur.

III Sudan and a Proposed Exclusionary Investment Policy for Duke

By executive orders from both President Clinton and current President Bush, no U.S. person or business entity may engage in transactions with other companies that do business with the government of Sudan. The executive orders understandably exclude transactions related to humanitarian assistance. Thus, any portfolio comprised only of U.S. publicly-traded or privately-owned companies is automatically divested from Sudan. Nonetheless, Duke's direct investments include significant foreign holdings.

As previously noted, Duke has no holdings of companies doing business with Sudan as of last spring. The issue, then, is whether to impose on DUMAC new exclusionary investment restriction relative to Sudan.

Would an exclusionary investment policy by Duke have any direct economic effect on the Sudanese government? The answer has to be yes; the only debate can be over the magnitude. Most any neo-classically trained economist, mindful of triangulation strategies, would say the very direct economic effect alone is negligible. Of course, some of those same economists would still ardently support an exclusionary policy on other grounds.

An exclusionary policy by Duke would be part of a larger global effort that affects Sudan in economic and signaling terms. By imposing the policy, Duke would be joining forces with many other state and local governments along with private endowments and foundations that have taken such actions. For example, the state of North Carolina recently imposed divestment on state pension and endowment funds by unanimous vote from both houses of the legislature. According to activists, Duke would not be a leader in this larger collective movement, but rather it would be in the middle or possibly closer to the end of the group action. Nonetheless, Duke's name would be an important contribution. Activists note that Sudan has reacted to economic pressures, and thus feels that the group action is having an effect on the Sudanese government.

Interestingly, perhaps the most compelling argument for the effectiveness of economic actions or sanctions is a connection to the 2008 Olympics in Beijing. Chinese-based companies have extensive business relationships with Sudan, especially in the oil sector.

The Chinese government is highly sensitive to any sort of international action that would affect the success of the 2008 Olympics. In response to criticism, the Chinese government recently assigned to Sudan a special envoy on human rights. This action is unprecedented for China. Thus, putting pressure on China has become an avenue to encourage or force Sudan to change its behavior. Examples like this show how Duke's participation in global action could have substantial impact.

There is also a philosophical view to consider: that an exclusionary investment policy relative to Sudan is the morally correct thing for Duke to do. The ACIR can only express moral views through the committee members' individual votes and accompanying personal statements.

DUMAC does not now have any restrictions on its investment strategy, apart from common sense restrictions such as not investing in organized crime activities. Although DUMAC had little or no Sudan-related holdings at the time the activists contacted the Provost, that outcome was not the result of some form of proactive tacit divestment planning by DUMAC. Instead, the lack of Sudan-related holdings at that time was coincidental.

The financial cost of an exclusionary restriction is hard to gauge, but the committee understands it to be small relative to the total income of DUMAC. The most difficult aspect of cost estimation is that DUMAC holds most of the critical information. Without that information, a cost analysis by ACIR would seem hastily done and poorly executed. The requisite information for a proper cost assessment could be obtained using the authority of the President, since he is a member of the executive committee of the board governing DUMAC. That would entail possibly months of delay in reaching a recommendation for a decision that is perhaps overdue as it is.

IV Final Action

The ACIR voted on a motion patterned after the instructions from the President's Special Committee on Investment Responsibility. The motion and final vote are contained in the cover letter to President Brodhead.

Addenda follow.

V Addenda

V-1 ACIR's general view

A. The ACIR's general recommendation on Duke's investment policy and large scale mass murder

V-2 The history from the Provost's meeting to final committee vote

B. The students' letter of April 13, 2007
C. The Provost's letter (and attachments) of August 28, 2007, to the ACIR chair
D. A political map of Sudan
E. "The Politics of Death," by Gerard Prunier
F. State of North Carolina Resolution on Sudan
G. The agenda of the fact finding session of October 16, 2007
H. Advertisement of Public Forum; appeared in the Duke Chronicle Oct 10-12
I. The transcript of the fact finding sessions of October 16, 2007
J. The committee vote of November 13, 2007

V-3 Supplementary Details

K. The minutes of the ACIR meeting of September 9, 2007
L. The minutes of the ACIR meeting of November 13, 2007
M. Board of Trustees documents specifying the protocols on investment responsibility (included to make the document self contained).
N. Why the term "genocide" does not appear in ACIR reports.
O. Statement of dissenting voter.

ADDENDUM A:

ACIR General Recommendation on Duke's Investment Policy and State Sponsored Mass Murder

Although outside the immediate purview of the ACIR, the committee learned that the governments of Sudan and elsewhere sometimes undertake systematic actions that result in large scale mass deaths that can only be characterized as crimes against humanity. Quite often, but not always, the media are very effective it its task of bringing these crimes to the attention of the public. To its own regret, the outcome is uneven, and some tragedies get substantial attention while other ghastly activities pass unnoticed.

The ACIR is keenly aware that DUMAC cannot be expected to have its own internal human rights watch committee. It is also aware of the difficulty of identifying problematic companies – there are many thousands of publicly traded and privately held companies.

Be that as it may, the media can persuade the public that instances of state-sponsored large-scale murder reach an unacceptable degree of inhumanity. The ACIR advises the President to recommend to the Board of Trustees that DUMAC avoid direct investments in companies doing business with such governments whenever large scale inhumane behavior is clearly evident. In addition, DUMAC should send letters expressing this preference to the managers of commingled funds.

There is a very strong likelihood that, from time to time, concerned members of the Duke community will approach the Provost inquiring about Duke's holdings relative to some sensitive part of the world. DUMAC should be prepared to provide data promptly as these requests come in.

This recommendation passed ACIR by unanimous acclamation.

ADDENDUM B: The students’ letter of April 13, 2007

Provided on following pages. Note that a duplicate copy appears as an attachment to the Provost's letter to the committee chair.

ATTACHMENT #3

26 Georgetown Court
Durham, NC 27705

April 13, 2007

Provost Peter Lange
220 Allen Bldg
Durham, NC 27708

Dear Provost Lange,

We'd like to extend to you our deepest thanks for taking the time to inform us about Duke's financial relationship (or rather, the lack thereof) with firms that are in business with the Sudanese government. We were delighted to learn that the University had already sold the last of its direct holdings in the "offending" companies. At this time, we respectfully propose several recommendations designed to ensure that Duke refrains from financially supporting genocide and other human rights catastrophes in the future.

1. *Remain directly divested from Sudan.* The university should not directly invest, or reinvest, in the offending companies.

2. *Decrease or limit current co-mingled investments in offending companies.* Duke holds shares in co-mingled funds not specifically targeted by our divestment campaign. These co-mingled funds include mutual funds, for example, that invest in offending companies. The administration should consider divesting from these funds, or at least not invest any more money in them.

3. *Apply pressure strategically to divest co-mingled funds.* The university administration should continue acting proactively, by contacting the managers of mutual funds in which Duke is invested and asking them to divest from offending companies.

4. *Maintain appropriate oversight of university investments.* Since Duke's holdings are not publicized, the student body has no way to independently verify the university's divested status. The Duke University Management Company and the University Priorities Committee should reevaluate Duke's holdings on a regular basis to confirm that the university remains divested from offending companies.

These proposals are addressed to the President's Special Committee on Investment Responsibility, the University Priorities Committee, and any other bodies associated with the review procedures codified in the University's Guidelines on Socially Responsible Investing.

The international movement to divest from Sudan would benefit substantially from a public expression of support by an institution as reputable as Duke. To go on record as one of dozens of colleges and universities that have taken deliberate, proactive measures to restrict their investments in a genocidal regime would represent a lasting tribute to the values for which Duke stands. Accordingly, we ask that the University release a public statement of the fact that it is no longer invested in the offending firms, along with a sincere pledge to adopt the recommendations outlined above.

We hope that Duke will evince a continued commitment to defend human rights wherever and whenever they are threatened.

Gratefully,

Andrés Luco
Catherine Workman
Aaron Young
Amnesty International—Duke Chapter
Black Student Alliance
Duke Human Rights Coalition
Duke Organizing
Environmental Alliance
Global Grasp
The Global Health Working Group
The Human Rights Working Group
International Association
Millennium Village Project
Nicholas Institute of Graduate Liaisons
Students Taking Action Now: Darfur

ADDENDUM C: Provost's letter to the ACIR Chair with response

Provided on following pages.

Duke University
Durham
North Carolina 27708-0005

Office of the Provost

220 Allen Building
Box 90005
Telephone (919) 684-2631
Fax (919) 684-4421

Memorandum

To: George Tauchen

From: Provost Peter Lange on behalf of the Special Committee on Investment Responsibility P.

Date: August 28, 2007

Re: DUMAC Investments in Darfur

In March 2007 I received correspondence from a group of Duke students, representing various other students and student groups at the University, requesting that Duke look at its investments in Sudan with an eye to undertaking actions that would eliminate any Duke financial relationships with a designated list of companies doing significant business with the Sudanese government. At that time, and before meeting with the students, DUMAC was requested to examine its direct and indirect holdings in those companies. It reported that it had recently had $560,000 in direct holdings in one company which had subsequently been sold, and that it had indirect holdings, through mutual funds, swaps, and other instruments, of an additional sum (see attachment #1 - email of February 28).

In my role as Provost and Chair of the Special Committee on Investment Responsibility (see attachment #2 – Committee membership), I subsequently met with a delegation from the students on April 2, 2007 and discussed the matters with them. They were pleased that we had no current direct holdings. They also recognized that their campaign was not targeted to change investments in indirect holdings, although they would like the University to do what it can to urge these funds to divest. Following the meeting they promised to get back to me regarding possible further actions they might request, which they did in the letter of April 13 (see attachment #3) in which they formally asked that the University undertake some specific actions with regard to DUMAC's investments and the Sudan.

In light of these requests and after some delays due to vacation schedules, the Special Committee on Investment Responsibility met on August 16 to examine whether there is, to quote from our mandate, "a credible allegation of social injury on the scale envisioned in the guidelines" and, therefore to determine whether the "issue merits further investigation" and hence should be referred to the Advisory Committee on Investment Responsibility.

At our meeting relatively little time was necessary to determine that the situation in Darfur may rise to the level of social injury foreseen in the policy and that there is intensive concern on the part of some members of our community and widespread concern as well outside of Duke about the situation there. In addition, I was able to provide the Committee with updated information further indicating that Duke currently still holds no direct investments in the companies on the target list while continuing to have some investments in commingled funds and index swaps which do have holdings in some of those companies (see attachment #4).

In light of these considerations, the Special Committee on Investment Responsibility recommends that the Advisory Committee on Investment Responsibility be convened to address the following issue: should a recommendation be made to the President that the Duke University Board of Trustees consider requiring DUMAC to undertake no direct investments in any company on the list of companies previously identified as being heavily engaged in business with the government of Sudan and as listed on attachment 4 (and any subsequent updates of that list)?

I will be happy to discuss this matter further with you should you wish to do so. If you agree to accept this recommendation, I would also like to so advise the students with whom I have been in contact.

PL:sb

cc: Richard Brodhead

"Shumate, David" <DShumate@dumac.duke.edu>

02/28/2007 03:08 PM

To "Brodhead, Richard" <richard.brodhead@duke.edu>

cc "Triplett, Neal" <NTriplett@dumac.duke.edu>, "Hall, Anders" <AHall@dumac.duke.edu>

bcc

Subject Sudan

History: This message has been replied to.

Attached is the information you requested last Thursday. As Anders notes below we do not currently have direct exposure to any of the listed companies. If you need anything else, please let us know.

Regards
David

David R. Shumate
Duke Management Co.
406 Blackwell St Ste 300
Durham NC 27701-3984
919.668.9911 voice
919.668.9926 fax
david.shumate@duke.edu

From: Hall, Anders
Sent: Wednesday, February 28, 2007 2:24 PM
To: Shumate, David
Cc: Triplett, Neal
Subject: Sudan divestment issue

Dave:

Of the 25 endowments that we use for performance comparison purposes, 11 have policies to divest from companies that may be affiliated with Sudan. The 14 that have no policy (that we know of) are:

- Duke University
- Massachusetts Institute of Technology
- New York University
- Pomona College
- Princeton University
- Rice University
- University of Chicago
- University of Michigan
- University of North Carolina at Chapel Hill
- University of Notre Dame
- University of Texas System
- Vanderbilt University
- Wellesley College
- Yeshiva University

One has a policy but does not disclose which companies are banned. For the other 10, I have amalgamated the divestment lists to tally our known direct and indirect exposure (our long-only and long/short equity managers have varying levels of transparency) to the companies at calendar year end. The attached file details this information.

Only one of the companies (Schlumberger) was held in an LTP separate account on December 31. The investment manager sold the position on February 2 and we no longer have any known direct exposure to any of the companies on this list.

I can provide more detailed information on the companies on the list that are publicly-traded if that would be helpful.

Anders W. Hall, CFA
Investment Manager

anders.hall@duke.edu

Sudan Divestment Analysis.pdf

Sudan Divestment Analysis

	Publicly Traded?	Brown University	Columbia University	Dartmouth College	Northwestern University	Stanford University	University of Pennsylvania	University of Southern California	University of Virginia	Williams College	Yale University	Total	Duke LTP Exposure (in millions) Separate Accounts	Commingled Funds	Index Swaps
ABB		√	√	√	√	√		√		√		7		$ 0.49	$ 0.05
Alcatel-Lucent		√	√							√		3			$ 0.04
Alstom		√								√		2			$ 0.03
BAE Systems										√		1			$ 0.08
Bentini (not publicly-traded)	No						√				√	2			
Bharat Heavy Electricals		√	√							√		3			$ 0.21
China National Offshore Oil Corporation (CNOOC)										√		1			
China Petroleum and Chemical Corporation (Sinopec)		√		√	√	√	√	√	√	√	√	9		$ 2.12	$ 0.85
DIT Power Kilo-X	No									√		1			
Finmeccanica										√		1			$ 0.01
Greater Nile Petroleum Operating Company	No			√								1			
Harbin Power Equipment		√	√							√		3			
Higleig	No						√				√	2			
Hi-Tech Petroleum	No						√				√	2			
Lundin International		√	√							√		3			
Mobil Telecommunications Company (MTC)										√		1			
Nam Fatt		√	√				√		√	√	√	6			
Oil and Natural Gas Corporation		√	√				√		√	√	√	6			$ 0.32
PECD		√	√							√		3			
PetroChina		√	√	√	√	√	√	√	√	√	√	10		$ 2.63	$ 1.66
Petroliam Nasional/Petronas Gas				√								1			
Ranhill										√		1			
Royal Dutch Shell										√		1		$ 3.79	$ 0.69
Schlumberger		√	√							√		3	$ 0.56	$ 4.79	$ 2.27
Siemens		√	√							√		3			$ 0.12
Sudan Telecom (Sudatel)			√							√		2			
Sumatec Resources			√							√		2			
Tatneft		√	√		√	√		√	√	√		7			
Telefonaktiebolaget LM Ericsson (Ericsson)										√		1			$ 0.08
Videocon Industries			√							√		2			
Weir Group										√		1			
White Nile			√	√								2			
Total	5	14	16	6	4	4	7	4	5	26	7		$ 0.56	$ 13.82	$ 6.41

Separate accounts: Duke directly owns the securities in accounts held at its custodian bank (Mellon) and can impose investment constraints on how the accounts are managed.
Commingled funds: Duke owns a share in a pool of securities held on behalf of multiple investors (e.g., a mutual fund) and cannot control how the pool is invested (other than our investment in the entire pool)
Index swaps: Duke receives the total return (price changes plus dividend payouts) on a broadly-diversified index and cannot control which securities are included in the index.

ATTACHMENT #2

PRESIDENT'S SPECIAL COMMITTEE ON INVESTMENT RESPONSIBILITY MEMBERSHIP

Provost	Peter Lange (Chair)
Executive Vice President	Tallman Trask
Chair, ECAC	Paula McClain
Dean of Professional School	Greg Jones
Young Trustee	Justin Klein
Vice Provost for Research	Jim Siedow

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Environmental Alliance
Global Grasp
The Global Health Working Group
The Human Rights Working Group
International Association
Millennium Village Project
Nicholas Institute of Graduate Liaisons
Students Taking Action Now: Darfur

Sudan Divestment Analysis

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ABB		√	√	√	√	√		√		√		7			$ 0.19
Alcatel-Lucent		√	√							√		3			$ 0.10
Alstom		√								√		2		$ 2.41	$ 0.09
BAE Systems										√		1			$ 0.10
Bentini (not publicly-traded)	No						√				√	2			
Bharat Heavy Electricals		√	√							√		3			$ 0.29
China National Offshore Oil Corporation (CNOOC)										√		1			$ 0.06
China Petroleum and Chemical Corporation (Sinopec)		√		√	√	√	√	√	√	√	√	9		$ 2.65	$ 0.82
DIT Power Kilo-X	No									√		1			
Finmeccanica										√		1			$ 0.04
Greater Nile Petroleum Operating Company	No			√								1			
Harbin Power Equipment		√	√							√		3			
Higleig	No						√				√	2			
Hi-Tech Petroleum	No						√				√	2			
Lundin International		√	√							√		3			
Mobil Telecommunications Company (MTC)										√		1			
Nam Fatt		√	√				√		√	√	√	6			
Oil and Natural Gas Corporation		√	√				√		√	√	√	6			$ 0.31
PECD		√	√							√		3			
PetroChina		√	√	√	√	√	√	√	√	√	√	10		$ 2.80	$ 1.48
Petroliam Nasional/Petronas Gas				√								1			$ 0.87
Ranhill										√		1			
Royal Dutch Shell										√		1			
Schlumberger		√	√							√		3		$ 5.36	$ 3.48
Siemens		√	√							√		3		$ 3.05	$ 0.42
Sudan Telecom (Sudatel)			√							√		2			
Sumatec Resources			√							√		2			
Tatneft		√	√		√	√		√	√	√		7			
Telefonaktiebolaget LM Ericsson (Ericsson)										√		1			$ 0.21
Videocon Industries			√							√		2			
Weir Group										√		1			
White Nile			√	√								2			
Total	5	14	16	6	4	4	7	4	5	26	7		$ -	$ 16.27	$ 8.46

Separate accounts: Duke directly owns the securities in accounts held at its custodian (Mellon) and can impose investment constraints on how the accounts are managed
Commingled funds: Duke owns a share in a pool of securities held on behalf of multiple investors (e.g., a mutual fund) and cannot control how the pool is invested (other than our investment in the entire pool)
Index swaps: Duke receives the total return (price changes plus dividend payouts) on a broadly-diversified index and cannot control which securities are included in the index

Creation of President's Special Committee on Investment Responsibility and Advisory Committee on Investment Responsibility

Preamble

The Board of Trustees recognizes that Duke University's ability to meet its educational mission and financial goals requires enhancing the value of the endowment over the long term by investing in companies that achieve real growth. It also recognizes the importance of ethical practices. A mechanism is necessary to assist the President in making recommendations to the Board of Trustees in keeping with the Board's Guideline on Socially Responsible Investing, which is attached. The committees noted below provide such a mechanism.

(1) President's Special Committee on Investment Responsibility (PSC)

The President's Special Committee shall consider proposals from the University community regarding specific investment responsibility concerns, first determining whether there is a credible allegation of social injury on the scale envisioned in the guidelines.

If the PSC finds that an issue merits further investigation, it will refer it to the Advisory Committee on Investment Responsibility (ACIR).

PSC Membership

The President's Special Committee on Investment Responsibility shall be composed of the Provost and the Executive Vice President (or their delegates); the Dean of one of the professional schools; the chair of ECAC or faculty member designated by ECAC; and a young trustee designated by the Board.

The PSC chair shall be appointed by the President.

PSC Operations

The PSC shall examine issues of investment responsibility involving the University's endowment securities. If it finds that a company's activities or policies plausibly cause substantial social injury, and that a desired change in the company's activities could have a direct and material effect in alleviating such injury, the PSC will forward to the President a recommendation that the ACIR examine the issue in greater depth. The PSC will determine, on a case-by-case basis, the threshold of evidence necessary to forward a recommendation for further examination to the President.

The Chair is responsible for setting agendas. The Chair accepts written proposals from any member or group of the Duke community for possible inclusion on the agenda.

(2) Advisory Committee on Investment Responsibility (ACIR)
The Advisory Committee on Investment Responsibility is a University body advisory to the President with the following functions:

a. Receive issues referred to it by the PSC;

b. Monitor trends and activities in investment responsibility that have an impact on educational institutional investors;

c. Conduct research, update Duke's files on companies, and provide analyses when requested by the PSC;

d. Make recommendations to the President on how to vote proxies when the committee believes proxies should be voted outside the standard protocol of "economic interest;" whether to sponsor shareholder resolutions; whether to correspond with the management of corporations in which the University holds an identifiable equity position; when to divest; and on any new issues, which may warrant attention.

ACIR Membership
The Advisory Committee on Investment Responsibility shall include ten voting members: one undergraduate and one graduate or professional student nominated respectively by the Duke Student Government and Graduate and Professional Student Council, one alumnus nominated by the Duke University Alumni Association, three faculty members nominated by the Academic Council, the University Counsel or his or her delegate, the Deputy Treasurer or his or her delegate, and two administrative appointees chosen by the President. Each representative body will be asked to nominate two individuals for each position and the President will select who will be invited to serve.

Members shall be appointed for at least two years and may be reappointed, serving until their successors take office.

The ACIR Chair shall be appointed by the President from among the voting members.

ACIR Organization
The ACIR shall meet on call of the Chair.

The ACIR may ask individuals, from within the University or outside of it, to attend its meetings as consultants or otherwise provide advice and information.

To assist in its review of social responsibility proxy issues, the ACIR will have access to data compiled by or on behalf of the University on companies the securities of which are held directly by the University. It is understood that certain pooled or commingled investment vehicles may not permit the degree of disclosure possible for direct holdings.

ACIR Operations

The ACIR shall examine issues of investment responsibility involving the University's endowment securities and propose to the President recommendations for action by the Trustees. Such recommendations shall take into consideration the following factors: (1) the facts and information the ACIR has gathered in its study of the issues; (2) whether the offending firm's culpability is substantial and proven; (3) the opinions expressed within the Duke community regarding the issues, including the degree of consensus; and (4) the legal and financial impact of the recommended action on the companies in question.

The Chair is responsible for setting agendas. The Chair shall take as an agenda item only matters referred by the President or the PSC.

The ACIR may, at its discretion, sponsor or encourage the convening of occasional public meetings or forums of the Duke community to assess the views of members of the community.

In considering an allegation of substantial social injury, the ACIR shall investigate and analyze the allegation in whatever manner it deems appropriate and may then make a recommendation to the President, provided that the recommendation is first approved by the majority of the ACIR's members. Recommendations may call for voting Duke's shares in shareholder resolutions, making representations to management, divestment of securities, or other action as the ACIR deems appropriate.

The ACIR shall make its recommendation in writing to the President. The recommendation shall be accompanied by factual findings and an analysis of the question involved. Voting members of the ACIR who hold dissenting or divergent views may submit them in writing with the ACIR's recommendation.

Where the ACIR indicates a desire to deliberate on a proxy or divestment issue, the President will, where practicable, await a timely recommendation from the ACIR before taking action.

The President will make decisions on all recommendations for action under this policy.

Role of the President

The President will review the analysis and recommendation of the ACIR and, if he or she concurs, will forward a recommendation to the Board of Trustees.

If the President chooses not to forward the ACIR's recommendation to the Board of Trustees, he or she will explain his or her decision in writing to the ACIR.

An annual report published by the President's office will inform the University community of the issues examined by the PSC, recommendations make by the ACIR, and the disposition by the President's office and the Board of Trustees.

Duke University
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August 29, 2007

Professor Pete Lange
Provost, Duke University
Office of the Provost
220 Allen Building
Box 90005
Durham, NC 27708

Dear Peter:

I have received your memo of August 28, 2007, regarding DUMAC Investments in Darfur and the Advisor Committee on Investment Responsibility.

As per your memo, the Committee will start the process of examining the issue described therein. Specifically, the question for the Committee to address is whether a recommendation be made to the President that DUMAC undertake no direct investments in the list of companies previously identified as heavily engaged in business with the government of Sudan.

There is the initial meeting scheduled for September 7. I will convene additional meetings as necessary for the Committee to come to a final recommendation on the issue.

Of course you may advise the students that you have been in contact with me.

Sincerely,

George Tauchen
Glasson Professor of Economics and Finance

c: President Richard H. Brodhead

ADDENDUM D: Political Map of Sudan

Base 802712AI (R01237) 10-00

ADDENDUM E: “The Politics of Death,” by Gerard Prunier

Provided on following pages.

CURRENT HISTORY

May 2006

"'Genocide' is big because it carries the Nazi label, which sells well. . . . But simply killing is boring, especially in Africa."

The Politics of Death in Darfur

GÉRARD PRUNIER

For the world at large Darfur has been and remains the quintessential "African crisis": distant, esoteric, extremely violent, rooted in complex ethnic and historical factors that few understand, and devoid of any identifiable practical interest for the rich countries.

Since the international media got hold of it in 2004, Darfur has become not a political or military crisis but a "humanitarian crisis"—in other words, something that many "realist" politicians see (without saying so) as just another insoluble problem. In the post–cold war world such problems have been passed on to the United Nations. But the UN has not known what to do with this one, especially since the possibility emerged that this was another genocide.

Fearing that it would have to intervene and that the developed world would encourage it to act without giving it the means to do so, the UN passed the catastrophe on to the care of the newly reborn African Union, formerly the Organization of African Unity. For a continental organization wanting a new start, this was a dangerous gift. "African solutions to African problems" had become the politically correct way of saying "We do not really care."

Thus, in many ways, the hard reality of Darfur has been kept at arm's length, while statistics, press releases, UN resolutions, and photo opportunities have taken center stage. As in all globalized world crises, this recreation of the situation resulting from media attention and UN discussion has acquired as much importance as the reality it has been applied to, if not more, because whether real or not, it has deeply affected the initial reality. The result is continued talk and hand-wringing in the face of a crisis that, even now, grows worse.

GÉRARD PRUNIER *is director of the French Center for Ethiopian Studies in Addis Ababa. His latest book is* Darfur: The Ambiguous Genocide *(Cornell University Press, 2005), from which this essay draws.*

ARABS AND AFRICANS

Darfur was for several hundred years an independent Islamic sultanate, with a population of both Arabs and black African tribes. As a result of intermarriage, the "Arabs" are all quite black, and the distinction between the two groups—since both are Muslim—has been based on their respective native tongues. Annexed to Sudan by the British in 1916 (because London feared that the sultanate might enter the war on the side of Turkey and Germany), Darfur was thereafter completely neglected by the colonial power. When Sudan became independent in 1956, the new government continued this policy of neglect.

This was far from exceptional. Sudan is both enormous and overcentralized. The core area, centered around Khartoum and inhabited by riverine Arabs, has largely ignored the country's peripheral areas, though they represent the greatest part both of the territory and the population. The south, being Negro-African in culture and Christian religiously, was the first to rebel. The Muslim areas, blinded by the illusory "common bond" of Islam, took much longer to realize that they were no better off than the Christian south.

In February 2003, the Darfuri realized that the southern Christians were about to sign a peace agreement with the Islamist government in Khartoum and that they, the Muslims, would most likely be completely excluded from the new power- and wealth-sharing arrangements. After years of marginalization, resentment, frustration, and increasing social troubles, the Darfuri revolted in their turn.

Since they made up a large chunk of the army, Khartoum could not ask Darfuri soldiers to go home and shoot their own relatives. So, because the insurgents were mostly blacks, the government tapped the Darfuri Arab tribes for militiamen, telling them that the *abid* (slaves) were about to take over. The strategy worked wonderfully. Soon the Darfuri Arab militias, known as the *janjaweed* (which can be loosely translated as "the evil horsemen"), were looting, burning, raping, and killing entire black villages.

THE KILLER STORY

At first the Darfur crisis went almost unnoticed by the media. For a year there was hardly any reaction on the part of the international community, which had always misunderstood the Sudanese civil war, taking it to be a religious conflict and not a racial one. The logic explaining why Muslims were now killing Muslims was not part of the international community's available conceptual equipment.

The focus remained instead on peace negotiations in Naivasha, Kenya, between the Sudanese government and a rebel group in the south, the Sudan People's Liberation Army (SPLA). Even in Khartoum, Sudan's capital, a few nomads shooting up villages in distant Darfur did not draw much attention. After all, had not these people devoted themselves to fighting each other for as long as anyone could remember?

The school of explaining conflicts by "ancient tribal hatreds" is not the sole preserve of Western journalists. It has many adherents in Africa itself. An unconscious form of Sudanese cultural racism enabled the government (which in some ways believed its own propaganda) to dismiss the whole thing as "another instance of tribal conflict."

The deteriorating situation in Darfur had been known to the wider world since about 1999, but only through specialized publications such as *Africa Confidential* or the *Indian Ocean Newsletter.* In Sudan itself the national press began to give some space to the activities of the "bandits" around the middle of 2003, and the word "janjaweed" first appeared in September of that year when an attack on the small town of Kadnir in Jebel Marra was reported.

But the international media did not pick up on "evil horsemen" who had attacked yet another African village in a God-forsaken province at the center of the continent. It was nongovernmental organizations that began noting Darfur, first Amnesty International and then the International Crisis Group, and it is largely through them that the crisis began to emerge from the shadows.

Given their interest in Chad, the French media were among the first to give attention to the Darfur situation. The first US article on the subject appeared in *The New York Times.* It focused immediately on the "black versus Arab" side of the problem, an aspect that, even if justified, was going to obscure rather than clarify the essential elements in the following months. By then the Voice of America had followed the BBC in covering the growing crisis, and press agencies had begun sending reporters to eastern Chad.

What actually "blew the ratings," however, was an interview given by the UN Human Rights Coordinator for Sudan, Mukesh Kapila, to the UN's own IRIN network in March 2004. Kapila declared that Darfur was "the world's greatest humanitarian crisis" and that "the only difference between Rwanda and Darfur is now the numbers involved." He cited a tentative figure of 10,000 casualties. Having worked in Rwanda at the time of the genocide there, he knew what he was talking about. And although Rwanda itself had been neglected in its hour of need 10 years before, it had by then become the baseline reference for absolute evil and the need to care.

Everyone knew that a military operation was the only form of intervention that could have any drastic effect.

Newspapers went wild, and *The New York Times* started to write about "genocide." The "angle" had been found: Darfur was a genocide and the Arabs were killing the blacks. The journalists did not seem unduly concerned by the fact that the Arabs were often black, or that the "genocide" was strangely timed given Khartoum's goal of reaching a peace accord in Naivasha. Few people had ever heard of Darfur before; its history was a mystery that nobody particularly wanted to plumb. But now there was a good story: the first genocide of the twenty-first century.

Suddenly it was the Naivasha talks in which interest seemed to slacken. Here was something really serious and happening *now,* not like the peace negotiations, which had been dragging on for two years. Heart-wrenching images of children, rapes, and horsemen appeared, and suddenly everyone was interested, from the quality press to the mass media by way of the intellectual publications. What is conventionally known as "world opinion" finally cared about Darfur, even if the actual mechanics of what was happening remained obscure.

DELAYED REACTION

The moral outrage that was felt tended to overshadow, if not hide completely, the political nature of the problem. Some specialized articles started to disentangle the various lines of causality, but they soon were lost amid the loud humanitarian demands for action. "Action" was a big word, although no one went so far to as to demand military intervention. Iraq and its image of easy military success leading to political discomfiture were still too present on television screens.

Moral indignation and its attendant media coverage kept rolling on until the end of 2004. Darfur was *the* humanitarian crisis and horror story of the year and writing about it was now obligatory. Then came the Asian tsunami on December 26, and Darfur instantly vanished from television screens and newspaper pages. The media could handle only one emotion-laden story at a time.

Darfur had enjoyed its famous 15 minutes of Warholian celebrity. It had even remained in the limelight for over six months, which for an African horror story is a considerable amount of time. And if it was true that some sort of "peace" had been signed in Nairobi on January 9, 2005, surely the show was over.

But before we move back to reality as opposed to its media image, we have to answer one question about the Darfur coverage: Why so much so late? The lateness is probably easiest to explain. Darfur was not expected to happen when it did, and it did not fit the common patterns of thinking about Sudan. Everyone knew Sudan's north-south conflict was a religious war in which wicked Muslims killed desperately struggling Christians. There had been over a million casualties, perhaps as many as a million and a half, and we had accepted that. Peace was at last about to be achieved now that the evil Hassan al-Turabi had been replaced as Sudan's leader by the far from virtuous but acceptable Omar Hassan al-Beshir. Yet this sudden Muslim-on-Muslim violence had surged to the forefront of world attention in a way that was completely unexpected and hardly explicable.

This violation of settled understanding also helps to explain the intensity of the media coverage once it finally took off. There was a kind of delayed reaction, a substitute for disappointment. The media were preparing for a nice story: peace at last, returning refugees, selfless NGO and UN workers helping the destitute, Muslim-Christian coexistence and perhaps even reconciliation, a farewell to arms. In other words, an African success story.

Now everything, even the way of interpreting the situation, had turned topsy-turvy, which is why the "genocide" angle soon became so important. No one denied that an enormous quantity of human beings had been killed, but was it or was it not genocide? Although it made little difference to the interested parties who continued to die without recourse to international legal concepts, the word became a question of the utmost relevance in the media.

Meanwhile humanitarian action was trying, as so often before in similar circumstances, to fill the gap between the media-raised expectations of public opinion and the prudent procrastination of the political and diplomatic segments of the international community.

THE MISSING CAVALRY

Washington was embarrassed by the Darfur crisis, not least because it did not fit well within either of the two main camps in the administration and on Capitol Hill: the "realists" and the "Garang lobby" (that is, supporters of the SPLA leader John Garang). The "realists" were found mostly in the State Department, the CIA, and the Defense Intelligence Agency. They argued that, given the useful role that Khartoum was playing in the war on terrorism by supplying information about its erstwhile friends, it should at least be helped even if perhaps not fully supported, especially if it showed any signs of cooperation at Naivasha.

The "Garang lobby" was found mostly in Congress and at the US Agency for International Development. On June 1, 2004, members of Congress who sympathized with the SPLA sent President George W. Bush a list of 23 names of janjaweed supporters, controllers, and commanders who were either members of the Sudanese government or closely linked to it. The message was clear: do something about these people.

President Bush seemed discomfited by the implicit demand. Supporters of anti-Khartoum legislation tended to be more "on the left." Yet there was a core group of anti-Khartoum activists at the opposite end of the political spectrum from where he drew most of his electoral support. Many fundamentalist Protestant organizations had rallied to the anti-Khartoum lobby. By mid-2004, vocal Jewish groups such as the Committee for the Holocaust Memorial in Washington had also joined in the indignant chorus of protests about Darfur.

The president thus found himself under pressure from an array of public opinion elements too wide to be ignored during an election year. Yet, since the "realists" in the intelligence community kept insisting that Khartoum was too important to be harshly treated, these contradictory pressures led the White House to compromise on all fronts—supporting the Naivasha negotiations; not putting too much practical pressure on Khartoum, but nevertheless approving legislation that could be used as a sword of Damocles in case of noncompliance; becoming vocal on Darfur; putting a fair amount of money on its humanitarian aspect—but doing nothing at the military level.

This author was assured that Secretary of State Colin Powell had practically been ordered to use the term "genocide" during his high-profile September 9, 2004, testimony to the Senate Committee on Foreign Relations, but that he also had been advised to add in the same breath that this did not oblige the United States to undertake any sort of drastic action, such as a military intervention.

President Bush in short tried to be all things to all people on the Sudan/Darfur question. Never mind that the result was predictably confused. What mattered was that attractive promises could be handed around without any sort of firm commitment being made. Unsurprisingly, the interest level of US diplomacy on the Sudan question dropped sharply as soon as Bush was reelected.

Likewise, in its usual way of treating diplomatic matters, the European Union presented a spectacle of complete lack of resolve and coordination when it came to Darfur. The French only cared about protecting Idris Deby's regime in Chad from possible destabilization. The British blindly followed Washington's lead, finding this somewhat difficult since Washington was not very clear about which direction it wished to take. The Scandinavian countries and the Netherlands gave large sums of money and remained silent. Germany made anti-Sudanese government noises that it never backed up with any sort of action and gave only limited cash. And the Italians remained bewildered.

The result was a purely humanitarian approach to the crisis, with the EU and its member states giving $142 million (out of a total of $301 million; that is, more than the United States) without coming up with anything meaningful in terms of policy.

Everyone knew that a military operation was the only form of intervention that could have any drastic effect. But Brussels was quite incapable of mustering the energy to do in distant Darfur what it had failed to do without American or NATO prompting in neighboring Bosnia or Kosovo a few years earlier.

Even on the question of deciding on the nature of what was happening in Darfur, the union could not manage to speak with any clearly recognizable voice, its parliament only declaring that what was going on was "tantamount to genocide." During several Darfur "cease-fire" or "peace" talks in Abéché and Abuja, the Europeans pushed for a "no fly zone" above Darfur. But even when it was accepted, they did strictly nothing to try to enforce it.

THE UN'S DILEMMA

The UN was in a terrible position regarding the Darfur crisis for a number of reasons. First, it was deeply involved in the Naivasha process, boosting the capacity and resolve of regional governments in what ended up being a saga of endless procrastination and obfuscation. Khartoum kept playing Darfur against Naivasha in order to win at both levels or, if a choice had to be made, at least to keep Darfur out of the military reach of the international community. Second, the UN was at the forefront of the humanitarian effort both in southern Sudan and in Darfur.

Third, UN Secretary General Kofi Annan knew that the US administration hated him (and the UN in general) and would do anything in its power to make the world body and its secretary general make a potentially fatal false move. Fourth, the Arab/black African split that was implicit in the Darfur crisis had many echoes inside the UN. And finally, the EU member states and America kept pushing the world body to act as if they were not themselves responsible for it.

Annan knew that the December 1948 genocide convention only obliged the member states to "refer" such a matter to the UN, but that once the world body had accepted the challenge, it became mandatory for it to act. Therefore, his permanent nightmare over Darfur was that member states would corner him into saying "genocide," thereby forcing him to act, and then fail to give him the necessary financial, military, and political means to do so. For the United Nations, which had been shaken by the United States' bypassing it on the Iraq question, such a debacle would have been a catastrophe.

Caught on the horns of so many dilemmas, Annan tried to act without upsetting things, to scold without being threatening, and to help without intruding too much. The result was that he appeared weak and irresolute at a time when the United Sates and some of his own staff were insisting on more "action," even if it was no more than symbolic. In June 2004, after he had been booed by demonstrators in Harvard Square, Annan declared: "Based on reports I have received, I cannot at this stage call it genocide or ethnic cleansing yet."

This was the worst of both worlds: he had uttered the big taboo words, but prevaricated over their relevance. The pressure kept building on the UN to come up with some radical solution. And the more the pressure built up, the more the secretary general resisted it, because he knew only too well that those who were applying it had no real intention of doing anything.

The more the crisis developed, the less the UN seemed capable of doing anything political about it, even though at the humanitarian level it carried over 60 percent of the financial burden. In many ways, this situation came to demonstrate the UN's practical limitations in crises where the heavyweight member states do not want to act. Blaming the UN was easy for those who were responsible for its inaction. Passing the buck to the African Union was another favorite resort to sophistry.

The Report of the UN Commission of Inquiry on the Darfur Violence provided an example of the world body and the United Sates each acting their parts in a coordinated show of egregious disingenuousness. The report documented violations of international human rights by "people who might have acted with genocidal intentions"; yet the situation was not a genocide, although it was definitely "war crimes." But the United States did not like the International Criminal Court (ICC), fearing that some of its own human rights violations, particularly in Iraq, might make it liable to prosecution. It therefore did not favor the UN suggestion that Darfur war crimes should be brought to the ICC, suggesting instead that a special tribunal might be set up in Arusha on the model of the Rwanda tribunal.

The Darfur tragedy will continue to unfold. And the cry of "never again" heard after the Rwandese genocide will ring hollowly as "once again."

Off the record, everyone worried about naming names in an eventual prosecution because the perpetrators of the Darfur war crimes were the same people who, according to the January 9, 2005, "peace agreement," were now supposed to implement the Nairobi settlement and turn Sudan into a brave new world of peace and prosperity.

THE AFRICAN UNION'S MOMENT

Once the OAU had decided to shed its skin and be reborn as the African Union (AU), it had known that it would be judged, both by its member states and by the broader international community, on the basis of its competence in conflict management. Darfur was the first major crisis to face the organization since its transformation, and its commission chairman, Alpha Konare, and the AU chairman in 2004–2005, President Olusegun Obasanjo of Nigeria, knew that the moment of truth had arrived.

But the financial provisions under which the AU operated were highly unrealistic. Its 2003 budget had been a meager $43 million and out of this the member states had neglected to pay $26 million. This did not prevent Konare from requesting $1.7 billion for a "strategic plan" for the AU, which was to have its own peace fund, a pan-African parliament (based in South Africa), a court of justice, and even a standing army. When the dreaming stopped, the Addis Ababa–based organization finally settled for a budget of $158 million, with $63 million financed by obligatory payments and another $95 million by "voluntary contributions."

In the short term, the estimated cost of a peacekeeping operation in Darfur—nearly $250 million—had to be financed entirely by foreign donors. In many ways they were only too glad to contribute. Brussels promised $110 million and others, including Washington and the UN, pledged the rest. The AU decided to send 132 observers to Western Sudan, with 300 troops whose mandate would be restricted to protecting the observers.

It also declared that in its opinion, this was not ethnic cleansing in Darfur. This was to be a recurrent problem for the AU: in many ways it has not stopped being the "heads of state trade union," which President Julius Nyerere of Tanzania had denounced in 1978. Afraid of Darfur's potential for splintering the organization between Arabs and black Africans, Konare tried his best to minimize the racial angle of the crisis. Worse, he systematically refused to condemn Khartoum or even to put the responsibility for the massacres squarely on the janjaweed. For the AU, Darfur remained a case of mass murder without any known perpetrators, and Khartoum was even discreetly advised on how to "handle the whites."

Obasanjo had offered 2,000 Nigerian troops, but only a fraction of them were going to be sent as part of the AU contingent. Khartoum's minister of the interior, Abd-er-Rahim Mohamed Hussein, one of the two or three most powerful figures in the government, retorted, "We will not tolerate the presence of any foreign troops, whatever their nationality." In Khartoum's usual style this meant, "We will accept foreign troops: all that matters is their nationality and their mandate."

Khartoum would be satisfied on both accounts, leading it to accept what it had at first so vociferously rejected. The troops would all be African. And their mandate—peacekeeping alone being acceptable—was satisfactory both for the Western countries, which were let off the hook easily, and for Khartoum, which was getting an impotent and probably mute witness to its "good faith."

As for the AU, it was also satisfied: it had been allowed to play in the big boy's league and would not have to pay for the privilege. "Africa" would be at the forefront of the Darfur crisis and any accusation of impotence or limitation of means would be beamed back at the donors.

In a way not completely unlike that of the UN, the AU has been scheduled for a "Mission Impossible." It is supposed to substitute itself for the coalition of the unwilling, to stop what it is only mandated to observe, to operate on a shoestring, and to keep the pretense of serious international involvement for its tight-fisted sponsors. Predictably, all it has achieved is a token presence.

THE USUAL EXPLANATIONS

Once the principle of some kind of foreign intervention was decided, even one as limited as that given to the AU, the problem of "genocide" came back to the fore, not so much as a media term but as a legal label with potential consequences for international proceedings and criminal sanctions.

The number of victims is not a key factor in deciding whether large-scale killings constitute a genocide or not. But numbers are relevant, first in themselves (the magnitude of what the targeted group has suffered) and secondly because of their real or potential impact on world opinion. In the case of Darfur, however, numbers of victims have been both extremely difficult to compute and the object of fierce differences of opinion.

A more fundamental aspect of the problem is semantics, which not only goes to the heart of the matter but illuminates the way Darfur has been dealt with by the international community. Four types of explanations have been offered for the Darfur violence. The first is that it is an explosion of tribal conflicts exacerbated by drought. This has been usually (but not always) the Sudanese government's explanation.

Second, it is explained as a counterinsurgency campaign gone badly wrong because the government has used inappropriate means to fight back the insurrection. This is roughly the position of the Darfur specialist Alex de Waal and a number of Western governments. De Waal does not use the argument to exonerate Khartoum. But the Western governments adopting this position usually minimize Khartoum's responsibility, preferring to talk of "errors."

A third explanation posits a deliberate campaign of "ethnic cleansing," with the Sudanese government trying to displace or eliminate "African" tribes in order to replace them by "Arab" ones that it feels would be more supportive of "Arab" rule in Khartoum. Finally, there is the genocide hypothesis, supported by evidence of systematic racial killings.

The "ethnic conflict" explanation has to be looked at technically, not ideologically. Ethnic tensions and problems have existed in Darfur for a long time, though not along the lines of the present conflict. This is an essential point that makes Darfur not unlike Rwanda. Tensions between Tutsi and Hutu were already present when the first Europeans arrived in the 1890s. However, they had never been globalized in the way that occurred during the 1994 genocide. Ethnic tensions can slip into violence, but they involve local weaponry, do not present a relentless and systematic character, and do not entail large-scale cooperation from the administration.

When Darfur villages were bombed and strafed by government aircraft, this was not the work of spontaneously violent local nomads. When the janjaweed were organized into coordinated military units and assigned to camps they shared with the regular army, it was not possible to characterize what was happening as spontaneous violence. Ethnic tensions in Darfur were and still are real, and recurring droughts have made them worse. But they of themselves were not sufficient to unleash the violence we have seen. They were the raw material, not the cause.

Nevertheless, Khartoum has systematically resorted to this and other similar "explanations" in order to deny its involvement in the massacres. The problems of Darfur are caused by "bandits, not rebels"; in any case these bandits are "just a little gang, incapable of standing up to the regular army"; as for the janjaweed, they are "a bunch of thieves," just like the rebels. Actually, the rebels and the janjaweed are the same thing. There is "no rebellion in Darfur, just a conflict among specific tribes. The government has not armed any militia. The propaganda in the West is trying to exaggerate what is happening." A list of such quotations would be almost endless.

If one discounts these unlikely "explanations," then what of the "counterinsurgency gone wrong?" In many ways, this is true, but is it the whole picture and, specifically, is it an excuse of some kind? Technically, Darfur is a bad case of poorly conceived counterinsurgency carried out with completely inadequate means. A "clean" counterinsurgency may even be impossible if a guerrilla movement has arisen from deep-seated economic, social, and cultural grievances.

But beyond this question of "counterinsurgency gone wrong," there is another point that causes the problem to slip into another dimension. In many ways the 1980s were a period of permanent counterinsurgency, when Arabs in Khartoum looked on the "African" tribes in Darfur as the enemy. The fact that the pace of the violence slowed down somewhat during the 1990s did not change that basic outlook. The state of ethnic relations resulting from frantic ideological manipulations of that period remained a permanent threat to non-Arabs in the province. Thus, any armed movement initiated by the non-Arab tribes of Darfur was like a red rag waved before the eyes of an excited bull.

Here again the parallel with Rwanda is striking. When Tutsi rebels entered Rwanda in October 1990 they probably did not realize the degree of danger they were creating for the other Tutsi living inside the country. In an atmosphere charged with racism an armed rebellion by the "inferior" group is fraught with enormous danger for the civilians of that group.

Indeed, counterinsurgency in Darfur could perhaps only have gone wrong. This was not "counterinsurgency" organized by a government trying to restore law and order. It was an answer with arms by a racially and culturally dominant group to the insurrection of a racially and culturally subject group. The hope that repression could be limited to combatants was completely unrealistic.

Blaming the UN was easy for those who were responsible for its inaction.

THE BIG-G WORD

The two other explanations, "ethnic cleansing" and "genocide," are closely related. As a rough differentiation we could take "ethnic cleansing" to mean massive killings of a certain section of the population in order to frighten the survivors away and occupy their land but without the intent of killing them all. "Genocide" is more difficult to define. The December 1948 International Convention on the Prevention and Punishment of Crimes of Genocide says that what constitutes genocide is "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction *in whole or in part."*

I personally used another definition in my book, *The Rwanda Crisis*—namely, a coordinated attempt to destroy a racially, religiously, or politically predefined group in its entirety. I am attached to the notion of an attempt at *total* obliteration because it has a number of consequences that seem to be specific to a "true" genocide. First, the numbers tend to be enormous because the purge is thorough. Second, there is no escape. In the case of a racially defined group, the reason is obvious, but if the group is religiously defined no conversions will be allowed. And if it is politically defined, no form of submission will save its members.

Finally, the targeted group will retain for many years after the traumatic events a form of collective paranoia that will make even its children live with an easily aroused fear. This is evident among the Armenians, the Jews, and the Tutsi. But it is present also in less obviously acute forms in groups such as the North American Indians, French Protestants, and Northern Irish Catholics. It is this "fractured consciousness" that makes future reconciliation extremely difficult.

If we use the December 1948 definition it is obvious that Darfur is a genocide, but if we use the definition I proposed in my book on Rwanda, it is not. At the immediate existential level this makes no difference; the horror experienced by the targeted group remains the same, no matter which word we use. But this does not absolve us from trying to understand the nature of what is happening.

And whether the "big-G word" is used or not appears to make a considerable difference in terms of international reaction. It is a measure of the jaded cynicism of our times that we seem to think that the killing of 250,000 people in a genocide is more serious, a greater tragedy, and more deserving of our attention than that of 250,000 people in nongenocidal massacres.

The reason seems to be the overriding role of the media coupled with the mass-consumption need for brands and labels. Things are not seen in their reality but in their capacity to create brand images, to warrant a "big story," to mobilize television time high in rhetoric. "Genocide" is big because it carries the Nazi label, which sells well. "Ethnic cleansing" is next best (though far behind) because it goes with Bosnia, which was the last big-story European massacre. But simply killing is boring, especially in Africa.

The notion of "ethnic cleansing," implying that the Sudanese government has been trying to displace African tribes in order to give their land to "Arabs," was at first not backed by any evidence other than the shouts hurled at victims by the perpetrators themselves. The perpetrators might hope for such an outcome from their massacres, but such a policy probably was not clearly thought out in Khartoum.

It is possible, however, that in a diffuse and decentralized way there has been a deliberate attempt to "Arabize" Darfur. The few instances of "Arabs" settling on the land abandoned by the African peasants do not seem very convincing. The "Arabs" are mostly nomads who do not appear to be much interested in becoming agriculturalists. But they are desperate for pastureland, made more and more scarce by the southward movement of the desert. Blacks in Darfur might be dying in part so that camels and sheep can graze where men used to cultivate.

A STRANGE BALLET

As for the most prominent use of the word "genocide" in connection with Darfur, Secretary of State Powell seems to have based his thinking on the December 1948 definition when he said on September 9, 2004, that in his opinion Darfur was a genocide. Other spokesmen for world opinion danced a strange ballet around the big-G word. President Bush declared: "Our conclusion is that a genocide is under way in Darfur." British Foreign Minister Chris Mullin was more prudent, merely saying that a genocide "might have taken place." The spokesman for the French Foreign Ministry limited himself to saying that there had been "massive violations of human rights," while Walter Lindner, for the German Foreign Affairs Ministry, said that this was "a humanitarian tragedy . . . with a potential for genocide." In the end none of them went beyond talk. The UN, the AU, and the humanitarians were left holding the bloody babies.

This leaves open the question of "intent," which was at the center of the UN Commission of Inquiry's decision not to call Darfur a genocide. The commission wrote that there was "not sufficient evidence to indicate that Khartoum had a state policy intended to exterminate a particular racial or ethnic group," a definition that moved away from that of December 1948, but which in itself is acceptable.

However, the semantic play ended up supporting an evasion of reality. The notion that this was probably not strictly speaking a "genocide" seemed to satisfy the commission that things were not really too bad. Conclusions about "war crimes" could have serious consequences, but that would require translating them into ICC indictments.

FROM BAD TO WORSE?

What is the present situation in Darfur? It is bad and fast deteriorating. The massive humanitarian effort undertaken during 2004 enabled over 2 million people to survive in internal-displaced-person camps, precariously perched on the edge of death. But this effort is now seriously undermined because the means that the international community is ready to put into African catastrophes are limited. The drought now playing havoc with the economies of Tanzania, Kenya, Somalia, and parts of Ethiopia will require money, and that money is largely being culled out of the Darfur budget.

This financial shrinkage is occurring at a time when violence in Darfur is again on the rise. The fact that the AU is completely impotent has given a feeling to both the janjaweed and the rebels that they need not bother about the military tourists in their midst. As a result, the guerrillas have stepped up military operations and the janjaweed have gone back to attacking the civilian population, albeit on a smaller scale than in 2004.

In addition, Darfur is suffering spillover from what might be called "the Chadian war of succession." Curiously enough this was triggered, if not caused, by Darfur. The Zaghawa tribe, which lives on both sides of the Chad border, was one of those targeted by the janjaweed. President Deby of Chad is a Zaghawa but he chose to ally himself with Khartoum in helping the repression because some of his personal enemies had joined the rebellion on the Sudanese side.

This somewhat paradoxical alliance caused many Chadian Zaghawa to side against Deby, and he now faces a full-fledged insurgency. And most of the rebels belong not only to Deby's clan but even to his own family. In mid-March they attempted a second coup against him (the first had taken place in May 2005), and then took refuge in Darfur when they failed. Deby now accuses Khartoum of helping his rebellious relatives in order to punish him for abandoning the repression camp.

Whatever the reality of the accusations and counter-accusations currently flying between Khartoum and Ndjamena, the result is a translation of Chad's civil strife into Darfur, as if the martyred province had not suffered enough. In response, the UN has proposed replacing the inefficient AU monitors with European or NATO forces. But, since such forces could be efficient in stopping the violence, the Sudanese government has blocked the proposal by all available means—including the setting up of bogus "terrorist" organizations that "threatened" to kill UN representative Jan Pronk and the US chargé d'affaires in Khartoum.

In the face of this blackmail, the international community has backed down and prolonged the AU's impotent mandate until the end of this year. Short of a military intervention such as that of a UN force firmly equipped with sufficient guns and a clear mandate to use them, the Darfur tragedy will continue to unfold. And the cry of "never again" heard after the Rwandese genocide will ring hollowly as "once again." ■

Addendum F: State of North Carolina Resolution on Sudan

AN ACT PROVIDING FOR HOW THE STATE TREASURER SHALL ADDRESS CERTAIN STATE INVESTMENTS RELATING TO SUDAN.

The General Assembly of North Carolina enacts:

SECTION 1. Legislative findings.

(1) On July 23, 2004, the United States Congress declared that "the atrocities unfolding in Darfur, Sudan, are genocide."

(2) On September 9, 2004, Secretary of State Colin L. Powell told the U.S. Senate Foreign Relations Committee that "genocide has occurred and may still be occurring in Darfur" and "the Government of Sudan and the Janjaweed bear responsibility."

(3) On September 21, 2004, addressing the United Nations General Assembly, President George W. Bush affirmed the Secretary of State's finding and stated, "At this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide."

(4) On December 7, 2004, the U.S. Congress noted that the genocidal policy in Darfur has led to reports of "systematic rape of thousands of women and girls, the abduction of women and children, and the destruction of hundreds of ethnically African villages, including the poisoning of their wells and the plunder of their crops and cattle upon which the people of such villages sustain themselves."

(5) Also on December 7, 2004, Congress found that "the Government of Sudan has restricted access by humanitarian and human rights workers to the Darfur area through intimidation by military and security forces, and through bureaucratic and administrative obstruction, in an attempt to inflict the most devastating harm on those individuals displaced from their villages and homes without any means of sustenance or shelter."

(6) On September 25, 2006, Congress reaffirmed that "the genocide unfolding in the Darfur region of Sudan is characterized by acts of terrorism and atrocities directed against civilians, including mass murder, rape, and sexual violence committed by the Janjaweed and associated militias with the complicity and support of the National Congress Party-led faction of the Government of Sudan."

(7) On September 26, 2006, the U.S. House of Representatives stated that "an estimated 300,000 to 400,000 people have been killed by the Government of Sudan and its Janjaweed allies since the [Darfur] crisis began in 2003, more than 2,000,000 people have been displaced from their homes, and more than 250,000 people from Darfur remain in refugee camps in Chad."

(8) The Darfur crisis represents the first time the United States Government has labeled ongoing atrocities genocide.

(9) The Federal Government has imposed sanctions against the Government of Sudan since 1997. These sanctions are monitored through the U.S. Treasury Department's Office of Foreign Assets Control (OFAC).

(10) According to a former chair of the U.S. Securities and Exchange Commission, "the fact that a foreign company is doing material business with a country, government, or entity on OFAC's sanctions list is, in the SEC

staff's view, substantially likely to be significant to a reasonable investor's decision about whether to invest in that company."

(11) Since 1993, the U.S. Secretary of State has determined that Sudan is a country the government of which has repeatedly provided support for acts of international terrorism, thereby restricting United States assistance, defense exports and sales, and financial and other transactions with the Government of Sudan.

(12) A 2006 U.S. House of Representatives report states that "a company's association with sponsors of terrorism and human rights abuses, no matter how large or small, can have a materially adverse result on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment."

(13) In response to the financial risk posed by investments in companies doing business with a terrorist-sponsoring state, the Securities and Exchange Commission established its Office of Global Security Risk to provide for enhanced disclosure of material information regarding such companies.

(14) The current Sudan divestment movement encompasses nearly 100 universities, cities, states, and private pension plans.

(15) Companies facing such widespread divestment present further material risk to remaining investors.

(16) It is a fundamental responsibility of the State of North Carolina to decide where, how, and by whom financial resources in its control should be invested, taking into account numerous pertinent factors.

(17) It is the prerogative and desire of the State of North Carolina in respect to investment resources in its control and to the extent reasonable, with due consideration for, among other things, return on investment, on behalf of itself and its investment beneficiaries, not to participate in an ownership or capital-providing capacity with entities that provide significant practical support for genocide, including certain non-United States companies presently doing business in Sudan.

(18) It is the judgment of the General Assembly that this act should remain in effect only insofar as it continues to be consistent with, and does not unduly interfere with, the foreign policy of the United States as determined by the Federal Government.

(19) It is the judgment of this General Assembly that mandatory divestment of public funds from certain companies is a measure that should be employed sparingly and judiciously. A Congressional and Presidential declaration of genocide satisfies this high threshold.

SECTION 2. Definitions.

As used in this act, the following definitions apply:

(1) "Active Business Operations" means all Business Operations that are not Inactive Business Operations.

(2) "Business Operations" means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(3) "Company" means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent

companies, or affiliates of such entities or business associations, that exists for profit-making purposes.

(4) "Complicit" means taking actions during any preceding 20-month period which have directly supported or promoted the genocidal campaign in Darfur, including, but not limited to, preventing Darfur's victimized population from communicating with each other, encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur, actively working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar actions.

(5) "Direct Holdings" in a Company means all securities of that Company held directly by the Public Fund or in an account or fund in which the Public Fund owns all shares or interests.

(6) "Government of Sudan" means the government in Khartoum, Sudan, which is led by the National Congress Party (formerly known as the National Islamic Front) or any successor government formed on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan), and does not include the regional government of southern Sudan.

(7) "Inactive Business Operations" means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

(8) "Indirect Holdings" in a Company means all securities of that Company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by the Public Fund, in which the Public Fund owns shares or interests together with other investors not subject to the provisions of this act.

(9) "Marginalized Populations of Sudan" include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan's North-South civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan's Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(10) "Military Equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles; or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(11) "Mineral Extraction Activities" include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(12) "Oil-Related Activities" include, but are not limited to, owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and facilitating such activities, including by providing supplies or services in support of such

activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered Oil-Related Activities.

(13) "Power Production Activities" means any Business Operation that involves a project commissioned by the National Electricity Corporation (NEC) of Sudan or other similar Government of Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited to, establishing power-generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

(14) "Public Fund" means any funds held by the State Treasurer to the credit of:

a. The Teachers' and State Employees' Retirement System.
b. The Consolidated Judicial Retirement System.
c. The Firemen's and Rescue Workers' Pension Fund.
d. The Local Governmental Employees' Retirement System.
e. The Legislative Retirement System.
f. The Legislative Retirement Fund.
g. The North Carolina National Guard Pension Fund.

(14a) "Scrutinized Business Operations" means Business Operations that have resulted in a Company becoming a Scrutinized Company.

(15) "Scrutinized Company" means any Company that meets the criteria in sub-subdivisions a., b., or c. below:

a. The Company has Business Operations that involve contracts with and/or provision of supplies or services to the Government of Sudan, to companies in which the Government of Sudan has any direct or indirect equity share, Government of Sudan-commissioned consortiums or projects, or to Companies involved in Government of Sudan-commissioned consortiums or projects and at least one of the following conditions is satisfied:

    1. More than ten percent (10%) of the Company's revenues or assets linked to Sudan involve Oil-Related Activities or Mineral Extraction Activities; less than seventy-five percent (75%) of the Company's revenues or assets linked to Sudan involve contracts with and/or provision of Oil-Related or Mineral Extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the Company has failed to take Substantial Action.
    2. More than ten percent (10%) of the Company's revenues or assets linked to Sudan involve Power Production Activities; less than seventy-five percent (75%) of the Company's Power Production Activities include projects whose intent is to provide power or electricity to the Marginalized Populations of Sudan; and the Company has failed to take Substantial Action.

b. The Company is Complicit in the Darfur genocide.

c. The Company supplies Military Equipment within Sudan, unless it clearly shows that the Military Equipment cannot be used to facilitate offensive military actions in Sudan or the Company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, for example, through post-sale tracking of such equipment by the Company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

Notwithstanding anything herein to the contrary, a Social Development Company which is not Complicit in the Darfur genocide shall not be considered a Scrutinized Company.

(16) "Social Development Company" means a Company whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to Oil-Related Activities, Mineral Extraction Activities, or Power Production Activities.

(17) "Substantial Action" means adopting, publicizing, and implementing a formal plan to cease Scrutinized Business Operations within one year and to refrain from any such new Business Operations; undertaking significant humanitarian efforts on behalf of one or more Marginalized Populations of Sudan; or through engagement with the Government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

SECTION 3. Identification of companies.

(a) Within 90 days of this act becoming effective, the Public Fund shall make its best efforts to identify all Scrutinized Companies in which the Public Fund has Direct or Indirect Holdings or could possibly have such holdings in the future. Such efforts shall include, as appropriate:

(1) Reviewing and relying, as appropriate in the Public Fund's judgment, on publicly available information regarding Companies with Business Operations in Sudan, including information provided by nonprofit organizations, research firms, international organizations, and government entities;

(2) Contacting asset managers contracted by the Public Fund that invest in Companies with Business Operations in Sudan; or

(3) Contacting other institutional investors that have divested from and/or engaged with Companies that have Business Operations in Sudan.

(b) By the first meeting of the Public Fund following the 90-day period described in subsection (a), the Public Fund shall assemble all Scrutinized Companies identified into a "Scrutinized Companies List."

(c) The Public Fund shall update the Scrutinized Companies List on a quarterly basis based on evolving information from, among other sources, those listed in subsection (a) of this section.

SECTION 4. Required actions.

(a) General. The Public Fund shall adhere to the procedure for Companies on the Scrutinized Companies List as provided in this section:

(b) Engagement.

(1) The Public Fund shall immediately determine the Companies on the Scrutinized Companies List in which the Public Fund owns Direct or Indirect Holdings.

(2) For each Company identified in subdivision (1) of this section with only Inactive Business Operations, the Public Fund shall send a written notice informing the Company of this act and encouraging it to continue to refrain from initiating Active Business Operations in Sudan until it is able to avoid Scrutinized Business Operations. The Public Fund shall continue such correspondence on a semiannual basis.

(3) For each Company newly identified in subdivision (1) of this section with Active Business Operations, the Public Fund shall send a written notice informing the Company of its Scrutinized Company status and that it may become subject to divestment by the Public Fund. The notice shall offer the Company the opportunity to clarify its Sudan-related activities and shall encourage the Company, within 90 days, to either cease its Scrutinized Business Operations or convert such operations to Inactive Business Operations in order to avoid qualifying for divestment by the Public Fund.

(4) If, within 90 days following the Public Fund's first engagement with a Company pursuant to subdivision (3) of this section that Company ceases Scrutinized Business Operations, the Company shall be removed from the Scrutinized Companies List and the provisions of this Section shall cease to apply to it unless it resumes Scrutinized Business Operations. If, within 90 days following the Public Fund's first engagement, the Company converts its Scrutinized Active Business Operations to Inactive Business Operations, the Company shall be subject to all provisions relating thereto.

(c) Divestment.

(1) If, after 90 days following the Public Fund's first engagement with a Company pursuant to subdivision (b)(3) of this section, the Company continues to have Scrutinized Active Business Operations, and only while such Company continues to have Scrutinized Active Business Operations, the Public Fund shall sell, redeem, divest, or withdraw all publicly traded securities of the Company within 15 months after the Company's most recent appearance on the Scrutinized Companies List.

(2) If a Company that ceased Scrutinized Active Business Operations following engagement pursuant to subdivision (b)(3) of this section resumes such operations, subdivision (1) of this subsection shall immediately apply, and the Public Fund shall send a written notice to the Company. The Company shall also be immediately reintroduced onto the Scrutinized Companies List.

(d) Prohibition. At no time shall the Public Fund acquire securities of Companies on the Scrutinized Companies List that have Active Business Operations, except as provided below.

(e) Exemption. No Company which the United States Government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan shall be subject to divestment or investment prohibition pursuant to subsections (c) and (d) of this section.

(f) Excluded Securities. Notwithstanding anything herein to the contrary, subsections (c) and (d) of this section shall not apply to Indirect Holdings in actively managed investment funds. The Public Fund shall, however, submit letters to the managers of such investment funds containing Companies with Scrutinized Active Business Operations requesting that they consider removing such Companies from the fund or create a similar actively managed fund with Indirect Holdings devoid of such Companies. If the manager creates a similar fund, the Public Fund shall replace all applicable investments with investments in the similar fund in an expedited time frame consistent with prudent investing standards. For the purposes of this section, "private equity" funds shall be deemed to be actively managed investment funds.

SECTION 5. Reporting.

(a) The Public Fund shall file a publicly available report to the General Assembly that includes the Scrutinized Companies List annually.

(b) Annually thereafter, the Public Fund shall file a publicly available report to the General Assembly and send a copy of that report to the United States Presidential Special Envoy to Sudan (or an appropriate designee or successor) that includes:

(1) A summary of correspondence with Companies engaged by the Public Fund under Sections 4(b)(2) and (b)(3) of this act.

(2) All investments sold, redeemed, divested, or withdrawn in compliance with Section 4(c) of this act.

(3) All prohibited investments under Section 4(d) of this act; and

(4) Any progress made under Section 4(f) of this act.

SECTION 6. Expiration of this act. This act expires upon the occurrence of any of the following:

(1) The Congress or President of the United States declaring that the Darfur genocide has been halted for at least 12 months.

(2) The United States revoking all sanctions imposed against the Government of Sudan.

(3) The Congress or President of the United States declaring that the Government of Sudan has honored its commitments to cease attacks on civilians, demobilize and demilitarize the Janjaweed and associated militias, grant free and unfettered access for deliveries of humanitarian assistance, and allow for the safe and voluntary return of refugees and internally displaced persons.

(4) The Congress or President of the United States, through legislation or executive order, declaring that mandatory divestment of the type provided for in this act interferes with the conduct of United States foreign policy.

SECTION 7. Other legal obligations. With respect to actions taken in compliance with this act, including all good faith determinations regarding Companies as required by this act, the Public Fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations in respect to choice of asset managers, investment funds, or investments for the Public Fund's securities portfolios.

SECTION 8. Reinvestment in certain companies with Scrutinized Active Business Operations. Notwithstanding anything in this act, the Public Fund is permitted to cease divesting from certain Scrutinized Companies pursuant to Section 4(c) of this act and/or reinvest in certain Scrutinized Companies from which it divested pursuant to Section 4(c) of this act if clear and convincing evidence shows that the value for all assets under management by the Public Fund becomes equal to or less than 99.50% (50 basis points) of the hypothetical value of all assets under management by the Public Fund assuming no divestment for any company had occurred under Section 4(c) of this act. Cessation of divestment, reinvestment, and/or any subsequent ongoing investment authorized by this section shall be strictly limited to the minimum steps necessary to avoid the contingency set forth in the preceding sentence. For any cessation of divestment, reinvestment, and/or subsequent ongoing investment authorized by this section, the Public Fund shall provide a written report to the General Assembly in advance of initial reinvestment, updated semiannually thereafter as applicable, setting forth the reasons and justification, supported by clear and convincing evidence, for its decisions to cease divestment, reinvest, and/or remain invested in Companies with Scrutinized Active Business Operations. This section has no application to reinvestment in Companies on the ground that they have ceased to have Scrutinized Active Business Operations.

SECTION 9. Enforcement. The Attorney General is charged with enforcing the provisions of this act and, through any lawful designee, may bring such actions in court as are necessary to do so.

SECTION 10. Severability. If any one or more provision, section, subsection, sentence, clause, phrase, or word of this legislation or the application thereof to any person or circumstance is found to be invalid, illegal, unenforceable, or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall remain effective and functional notwithstanding such invalidity, illegality, unenforceability, or unconstitutionality. The General Assembly declares that it would have passed this legislation, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared invalid, illegal, unenforceable, or unconstitutional, including, but not limited to, each of the engagement, divestment, and prohibition provisions of this legislation.

SECTION 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of August, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 12:27 p.m. this 30th day of August, 2007

ADDENDUM G: The agenda of the fact finding sessions of October 16, 2007

Advisory Committee on Investment Responsibility
Meeting Agenda
October 16, 2007

Committee Meeting
Location: Allen Building Board Room

Time	Speaker(s)
1:15 - 2:00	David Shumate from DUMAC
3:00 - 3:45	Stephen Smith, professor of Duke course about Darfur and Sudan
4:00 - 4:45	Andres Luco, representative for student activists on Darfur
5:00 – 6:00	Dinner

Public Forum
Location: Social Sciences Room 139

6:00 - 7:30 Public Forum

ADDENDUM H: **Advertisement of Public Forum; appeared in the Duke Chronicle on Oct 10 - 12**

PUBLIC FORUM

DARFUR, SUDAN, AND DUKE'S INVESTMENT POLICY

6:00 pm
Tuesday, October 16
Room 139 Social Science

The President's Advisory Committee on Investment Responsibility (ACIR) is soliciting informative discussion from the entire Duke Community about the situation in Darfur, Sudan, and Duke's investment policy. Anyone interested in speaking publicly to the ACIR on the issues should contact Professor George Tauchen at george.tauchen@duke.edu or Jim Speckart at speckart@duke.edu.

To promote a wide-ranging discourse and avoid duplicative discussion, speakers must reserve a place on the agenda. Time slots of 5-10 minutes each will be allocated on a "first ask" basis.

The deadline to arrange a place on the agenda is 6:00pm, Sunday, October 14.

ADDENDUM I: Transcript of the fact finding sessions of October 16, 2007

Provided on following pages.

ACIR Meeting on October 16, 2007: Transcript

George Tauchen started the meeting at 1:20pm in the Allen Building Board Room. He explained the genesis of the committee and its task to advise the President.

DAVID SHUMATE, DUMAC

George asked how David thought about the mandate.

David said their mandate is to get maximum return on Duke's investment, according to the guidelines that they get from the Board of Trustees. No "social responsibility" in their mandate. The last time divestment came up was with South Africa, and it was removed from DUMAC's portfolio in the mid-1990s. If they start using criteria other than the "maximum return" criteria, they are in effect spending the University's money, and that's not their role. They want people to know the consequences of limitations, worried that people don't see the hidden costs of divestment.

They are currently working with emerging hedge fund managers. They have set up a segregated account, which is unusual. Their first question is often "Do you have restrictions," which they don't want to deal with and can handicap Duke's relationship with the managers, and they can turn into costs/lost income.

Ralph asked about restrictions on hedge funds. Can you quantify the hidden costs?

David said it's a hard sell to managers to ask for restrictions, and they know at least two managers would have rejected Duke's investments if Duke asked for restrictions.

Martin asked about other institutions and if they have restrictions.

David: Not an issue with emerging managers. These managers have track records, but are starting new firms, and they aren't yet dealing with enough investors to get this question a lot. The same issue is there no matter what the size of the investor. Harvard writes bigger checks than Duke, but the issue is the same.

George asked if separate accounts are 100% Duke money.

David: Almost. We recently set up a platform (July 1, 2007) that allows the Duke Endowment to co-invest with Duke in a $600 million pool, plus another investor with $170,000 in the emerging managers platform. It's still experimental for DUMAC. They would love to do this with the long-short managers too, and the larger funds, but they won't allow it. It's very beneficial to Duke because they see the trades in real-time—the transparency issues of hedge funds go away.

Ralph asked about the advantage of separate accounts.

David: It's a competitive advantage for Duke over other investors. The structure saved Duke $7 million last year, and should save $20 million this year for a $600 million fund. It's cost effective access to exposure.

Martin asked about the total potential costs. What's the worst case scenario for cost of restrictions?

David: Well, the structure ("Blackwell Partners") would lose the $20 million in savings this year. Even if the percentage loss is small, the actual money lost could have done a lot for Duke.

Gordon asked if DUMAC is worried that restrictions would create tension with the managers.

David: It's not that it's a philosophical problem for them, but it's the procedural impact of adding filters to investment process.

Tracey asked about the charts in packet—exposure of $16 million in co-mingled funds that other schools have divested from? And additional $8 million in index funds, for a total of $25 million that people might claim Duke should divest from?

David: The part that people could talk about are the segregated accounts—Duke can't micromanage the larger hedge funds. And there's nothing currently in the separate accounts invested in Sudan. DUMAC does invest in emerging markets indexes, both efficient (through swaps for beta exposure) and inefficient markets, because the cost for exposure is very low. The costs for doing this directly through individual stocks by Duke would be too high. There's no real good way to get at the commingled vehicles.

Martin asked about the differences between hedge funds and commingled vehicles—the divestment is similar but Duke's options for action are different in each type of investment.

David: Separate accounts could allow managers to divest for Duke and not affect other investors, but Duke doesn't have that clout with the managers. There is chance for "adverse selection:" by mandating restrictions, Duke could end up working only with managers that can't get business elsewhere. Duke is working with managers who can turn down investors. They do want to work with Duke because of Duke's reputation.

Tracey asked about who turns Duke down.

David: If they can't get a separate account with a chosen emerging manager, Duke invests in a commingled vehicle with that manager.

Ralph: administrative costs are the savings?

David: Well, they allow Duke to mirror their investments, so Duke gets double the exposure for the same fee.

Peter: What other economic activities would cause Duke to end the relationship with a manager?

David: If they start investing in a way contrary to the reasons why Duke hired them in the first place (i.e. riskier investments, different areas of economy), Duke will terminate them. Or illegal activities.

Martin: Asks for “adverse selection” situation clarification

David: Duke might end up with a smaller or no segregated program if it can’t get the managers it wants. Duke will find another place to invest. Duke doesn’t invest in managers that manage to a set return, they look for style/area of investments and will accept lower returns over time.

Peter: Your argument is that there are 2 hidden costs of divestment—some fraction of emerging managers will be lost to us, and to make up for that, DUMAC would have to create a new vehicle to replace that.

David: Yes, it’s a real opportunity cost. It’s not free.

Martin: Compare Duke to other large investors like public employee funds, since states are passing divestment from Sudan laws?

David: Those investors are less concerned about return than Duke. Only Calpirs would try to make its commingled funds divest.

Tracey: Calpirs has the market power to make managers divest?

David: Yes, and they may not be as concerned about adverse selection as Duke. The best investment managers are extremely competitive who won’t accept being artificially restrained.

Peter: asked about Harvard and comparisons with other educational endowments re: divestment. They have the same opportunity costs, how did they navigate those?

David: Just about all of them did well on investments, but their investment structures may be different. Harvard does a lot of its own internal security selection, so it’s easier for them to divest. Yale has a fundamentally different structure—like a commingled vehicle with one big investor (bigger than Duke’s investments). There are different levels of response—one school has 15% in separate accounts and made divestment demands that were accepted by those managers. Others send letters of preference that request divestment across the portfolio, but not demand it, which isn’t as problematic as a mandate. Managers can then take or leave that preference. Some schools have only sent the letter. Of the 11 schools that have done something on divestment, some of them have only sent the preference letter. The chart isn't completely clear on their actions because they didn't provide full disclosure.

Ralph: How important is Sudan divestment to investors?

David: Not a big deal to Duke, but can't answer for other investors. If they are concerned, it's because they've invested heavily in China (which has companies in Sudan).

Martin: Hard to believe the $20M in costs from divestment is accurate. What would cost of a formal cost/benefit analysis be?

David: If our managers chose on their own not to invest in Sudan, we'd never know the difference. It's the unintended consequence of making demands that gets you. The true cost wouldn't really be $20M, because Duke would find other managers, but we'd lose managers that we'd otherwise get. We currently don't have a direct cost because Duke has no money in Sudan, so the costs are opportunity costs. Benefit would be in the tangible public statement of Duke's divestment from Sudan. Two of the seven managers of separate accounts asked about Duke's restrictions, so Duke would've lost those two managers if it made a divestment statement.

Ralph: if it costs $20M, return last year was what?

David: $1.5 billion in returns for new total of $7.6 Billion. So $20M is 0.3% of total portfolio.

Peter: The precedents will cost for the future.

David: Yes, the $20M will not be in the portfolio for future investment and growth.

George talked about the cost of research in what not to invest in. There are plenty of lists of "bad companies," and state of NC told the public fund it had to do the research.

David: Some of the most aggressive proponents of divestment are the ones selling the lists of "bad companies."

Martin: services sell lists. Was there ever any analysis done of the money Duke lost from divesting from S. Africa?

David: No. It's hard to quantify an opportunity cost, and the restriction preceded DUMAC's creation. Even thought we have nothing to divest from in Sudan right now, and making a public statement sounds like a cost-free move, it will adversely effect investments in the future.

Tracey: what about the two separate account managers who would turn Duke down if it mandated divestment—would they have tried other approaches to accommodate Duke's demands?

David: They wouldn't have made a separate account for us. Duke could've invested in their commingled funds, but with higher costs for Duke, and they would've still invested as they wanted. There's one manager that we could probable convince to work with us—it's not a large % of the segregated accounts pool (~12-15%).

George: are we not invested because there's no $ to make in Sudan?

David: The thing that keeps popping up is PetroChina, but DUMAC doesn't ask why managers sold that. Maybe they just found an equally profitable investment with less risk than that one.

Martin: Does DUMAC control where its seed money comes from, and what is cost to Duke's reputation—what is DUMAC's role?

David: We try to be helpful to Development with financial info, but we are focused on investment.

George: Costs of annual reporting on social issues to University?

David: To report on segregated accounts is pretty straightforward, but reporting on commingled accounts is complex and requires asking favors of managers. Also DUMAC can't guarantee the accuracy of those reports from commingled funds.

Ralph: The statement may be important (politically/morally/socially), but will it make a financial impact on the government of Sudan and invested companies?

David: I doubt it.

Peter: The way it would affect Sudan would be through being a part of a groundswell that would embarrass China into changing its relationship with Sudan. E.g., they went from "we have no interest in Darfur" to having recently appointed a Chinese representative on Darfur issue, which was unprecedented and accelerated the Khartoum's acceptance peace process. China is sensitive to naming and shaming, and the key moment by Darfur activists was linking Darfur to the Olympics.

Gordon: Singapore would be sensitive to Duke's action because of our close relationship with them.

Martin: This is a classic free rider problem. We don't have control over a host of other social issues, and Duke has a bunch of stances that it will have trivial impact on the larger whole, but it is part of a movement. E.g. Duke moving to carbon neutrality.

David: Another example is that DUMAC gets poor grades on sustainability because of lack of transparency, but DUMAC doesn't make those policies.

Peter: I see 4 options: 1) stick with current policy of having no policy, 2) divest only in direct Duke holdings excluding Blackwell Partners and commingled funds, 3) divest in direct Duke holdings plus in Blackwell holdings, and 4) divest in every vehicle. What's your advice—what would you do if you were on the Committee?

David: There's also the scope that you apply the restriction to, and the level of action. Clearly expressing a preference is not harmful to any investment vehicle. My personal bias is to work on it in other ways, since financial solutions aren't more than a gesture. The next step up is to mandate divestment in traditional segregated accounts, which would cause a problem with one manager that we could probably work through.

2:15 David Shumate leaves

COMMITTEE DISCUSSION

George: What about future events? All it took to make ACIR meet was a letter by student activists.

Ralph: One approach is to adopt a generic policy that expresses our displeasure of human rights abuses, and that within our control Duke asks DUMAC not to invest in those countries. George: But that's not in our mandate, that'd be a separate document from what ACIR can produce. The University is concerned that ACIR could be a rogue committee that will blindside them with a much larger policy.

Gordon: We don't need to create that statement, we need to define a process that the University can use for future events.

Martin: But this won't come up every year, other universities consider Sudan to be an extreme case, divestment is not really done for social or political objectives. It is extreme because of the word "genocide" in this case.

Peter: If we retreat from the policy of having no policy, we can expect further discussion. But this committee also has to worry about Duke's reputation, not just its financial impact. We won't be the first or last school to address this issue, we're in the middle.

Martin: Reputational costs could be huge. We might have to talk to development office about effects on them downstream. Peter: compared to other events at Duke in the last couple of years, this can't have much impact.

Gordon & Tori: probably not a huge impact on giving to Duke, which is so individualized. They're mostly worried about return on investment.

Martin: Unanimous/very popular passage of bills in states worries me. There is broad support from both sides of the aisle—can Duke afford to not have a policy?

Ralph & Peter summarized David's statements on DUMAC's preference.

Gordon: Is it better to come out with wishy-washy wording than nothing?

Martin: Have any of the other schools tried to divest their commingled assets?

Ralph: You can't tell from the list that DUMAC provided.

Martin: I tried to look up individual policies from different schools. Harvard's policy—divestment from PetroChina, and later were found to have PetroChina assets in their commingled assets (that is unresolved as of now). Amherst preference letter: they hope that managers take their views and the situation in Sudan under consideration as they make their investments. States that chose not to divest: Alabama, S. Carolina, Wyoming, N. and S. Dakota, Montana—oil and mineral rich states that are politically conservative, so list isn't surprising.

George: But Duke doesn't hold Sudan stocks, so we're probably not going to make a big statement by divesting.

Ralph: The way we announce it could make it into a big statement.

Martin: We're already behind the front-runners on this issue, so a quiet statement made quickly will be appreciated by those who follow the subject. Genocide isn't tossed around very often.

George: I hear different expressions on whether this is genocide, which usually carries along the responsibility to stop it. That's why Kofi Annan didn't call it that at the UN. George summarized the complexity. Peter points out that the "genocide" is the intended effect of the government, not just a side-effect of a civil war.

Martin: If restricting investments are costly, and Darfur situation is important to Duke, should Duke make a weak preference statement and donate $X a year to relief efforts?

George: The Provost has already set up the Human Rights Center, don't know how much money is going in.

Martin: But of course Duke is doing a lot of things to better society, so we that doesn't really mean that much.

Everyone at the table introduces themselves.

Peter: Thrust of U.S. foreign policy is to shame the rest of the world into action on Sudan. U.S. has very little direct leverage on Sudan—we are a 7 out of 10 on non-lethal leverage. President went from 6 to 7 this summer by identifying a few individuals as complicit and targeting their holdings for sanctions. China, Egypt, are most influential in UN proceedings, acting on Sudan's behalf. The long term solution is political, not military. A rural tribe and a nomadic tribe are now butting against each other because of desertification of the land, and it's been cheaper for the government to exterminate one of the two parties. The game is to make the Khartoum regime change their behavior, which will facilitate a peace negotiation between the two tribes. The first UN resolution was written so broadly by the British that it could implied that the Khartoum regime should be arrested. They also recognized that Sudan is an artificial country in some ways (as standard operating procedure in colonies, British would play 3 ethnic groups off each other), and Khartoum regime feels they can only stop the civil wars in south, west, and east by crushing them. Darfur war started when rebels attacked a government base, and the government response was hugely disproportionate. The oil is in the south, but Darfur was squeezed from politics as south gained importance, although they also don't get much benefit from profits. One of the great successes of the Bush administration is to negotiate a peace agreement for civil war in south that had claimed 2 million lives, helped because Sudan got scared that after 9/11 the U.S. would attack them. Oil companies (e.g. Talisman) were more complicit in that war, because in order to protect their assets & infrastructure they participated in the ethnic cleansing. One of the problems in solving Darfur is that no one speaks authoritatively for rebels, unlike in the south where 3 rebel groups banded together.

Tori: DUMAC and Duke model their budget on 8.5% growth, so 25% gain last year was great. We're still about 4th among universities. There have been slightly negative years, too.

Peter: David seemed to be marking success by comparing Duke's returns to other universities' returns.

STEPHEN SMITH, PROFESSOR IN PUBLIC POLICY

3:05 Stephen Smith begins to give his overall review of the Sudan/Dafur conflict.

There is a more principled stand to take—what is the risk of becoming an instrumentality of a government committing mass murder, (he will reference genocide question in a moment), and the committee's decision on that reflects less on Sudan/Darfur and more on how Duke sees itself and its relation to Africa.

Officially the conflict started in 2003, but has been going on since the mid-1980s. The 2003 conflict started when rebel groups spectacularly attacked garrison towns in Darfur, the Sudanese government responded with terrorist violence, and the world community belatedly became aware of the conflict because of that reaction by the Sudanese government. Is the government weak or strong? If it can commit genocide, it's clearly not weak, and the way that it has acted diplomatically indicates that it is a strong government as well, but you can also point to the outsourcing of violence and terrorism to tribal militia as a sign of weakness (outsourcing violence is a tradition in African conflicts, unfortunately). Overall, there is a hyperdominant central power, with half of the national assets concentrated in and around Khartoum (within a radius of 200 miles), which is unusual even in highly centralized states, with 8% growth rate in last 5 years. Oil receipts were $900 million in 1999 and $11 billion in 2006. The external debt is still $23 billion, so they are not awash in money either. The inner periphery outside this center is a fairly pacified, agricultural area, and there is a wider periphery (such as Darfur, extreme North and the South) characterized by extreme violence.

On whether genocide is applicable word: if you go by the UN definition of 1948, it is genocide, but that is not very operational, since it covers "partial or total destruction of a population." If you apply that to Africa in the last 20 years you would have 50 genocides easily. But it is the legal word. Up to 2004, the international community avoided applying the word genocide because of the legal consequences of invoking it, and there is no way back once it is used. Colin Powell in September 2004 said it was genocide, but at the same time said there were no consequences. In the eyes of some this was a victory, for labeling it genocide, but it was a defeat for others because of the lack of follow-up action. Stephen didn't want to reduce a comparison to Rwanda's genocide just to numbers, but you have to look at the figures: in Darfur—200,000 people killed since 2003 (40,000 of these were massacred by direct violence, the others died from disease, migration, epidemics, other indirect paths), in Rwanda—800,000 in 100 days were massacred. Even the replacement government in Rwanda killed 200,000 refugees in retaliation over 6 months in the Eastern Republic of Congo without international punishment.

In terms of geopolitics: the U.S. is the only government to call the mass murder as a genocide. The UN doesn't—a commission in Jan. 2005 said that there was no clear intentionality by the government, which is not believed by any experts. Clearly, Khartoum intended for the results to occur as they did. No European country followed the U.S.'s lead, as they did not want to get into advocating/causing regime change in Sudan. Also, casting the conflict only in the racial terms of Black Africans vs. Arab ethnic violence makes it touchy in another way. Casting the regime as an embattled Arab government that the U.S. wanted to topple, particularly because of its protection of Osama Bin Laden, meant that the politics of the Middle East could come into play, although since 9/11 the Sudanese have been very cooperative with American anti-terrorist efforts. The U.S. also brokered the peace deal between the North & South Sudan in 2005.

Casualty figures over the past year are about 200 casualties a month. The talk of ongoing genocide is misleading--the people who were bound to be killed in the genocide were killed in 2004, and the conflict is moving into new areas of the North and a little into the South. The deployment of the European force has also made it drift toward the central part of Sudan. It has split into innumerable rebel groups (20+), each of which has little institutional control for its "territory." There is supposed to be talks between these rebel groups, but it is not reasonable to expect results from these. Most of the casualties are now because from rebel infighting, although there have been some attacks by the

Sudanese Army, which is probably to destabilize the deployment of the so-called “hybrid force” of African Union and UN troops. The African Union troops were brought there in 2004, but they are poorly equipped and not even paid, but they act as a shield to keep Europe from sending its own troops. The UN will send 26,000 troops to Darfur, but Darfur is the size of Texas and there is no peace agreement for them to keep. They would have to impose a peace, but the Sudanese government won’t allow them to bring in the helicopters and other equipment they would need to do that.

George: Will the Sudanese government use the same tactics in new conflict areas as they did in Darfur? Answer: Yes. You have a hyperdominant center with little control in outer areas, and the army is not what it was when the gov’t came to power in 1989 (the Islamist movement split from Army in 2000, and had a branch that was part of the Darfur rebellion), so it can only break civilian resistance through tribal militias now. A rebel group in the south walked out of the peace agreement on October 10, so they look like they want to set up their own state rather than work on a national level. Other times the Sudanese gov’t engaged in genocide to quell rebellions: the South, in the Nuba mountains in 1992-94. Rebellions could also break the 2006 peace accord in the east.

In the 1960s and 1970s, the Sudanese army was the finest in Africa, but the current government has purged the officer corps from 1989-92, now the army is really a government militia renamed the Popular Defense Force, which now has nothing to do with a professional army.

Peter: If Duke wants to distance itself from other African states, how many would qualify? Answer: this throws us back to the “mirror effect” idea: 3-4 million were killed over 4 years in the Democratic Republic of Congo, and nothing happened—if you were looking at things objectively, clearly Duke should have distanced itself from all governments involved in that at least as much as Sudan now. But once you are worried mainly about Duke’s moral purity, the reality in Africa just becomes data that you feed to view yourself. To find places in Africa with violence on the order of Darfur, you need to look at the time between the end of the Cold War and the post 9/11 anti-terrorist period for the worst of the wars/violence. Democratic Republic of Congo, Sudan, Northern Uganda, Liberia, Sierra Leone, Rwanda etc.

Martin: Are these all examples where the central goverments are primarily responsible? Answer: Except DRC, where Uganda, Rwanda, and others established hegemony in Eastern part of country with natural resources. Also Chad, Central African Republic have failed states w/o strong influence on conflict. West Africa looks better now than in the 1990s.

Tracey: Any other places in the world where Duke should divest? Answer: I’m not an expert, but I don’t know of any other place where the central gov’t is trying to eradicate part of its population. It’s a higher risk in Africa, with its weak central governments that respond to rebellion with genocides.

Martin: Do you think there are long term consequences if there were massive divestment from Africa? Answer: I'm divided—Sudan clearly feels hurt by divestment, but they also have ready business partners in China, Russia, Malaysia. The oil sector should be the key sector you boycott, because little public good comes from it (e.g. telecommunications, which can help all Sudanese, but even in that case a German firm is building dams in the North that may help the central government to "arabize" that region). But there is no overall government strategy—the "turbulent state" model fits well to describe the differing factions with no one really masterminding it, never more threatened than now, with short term crisis strategies that can look like Machiavellian manipulations of global opinion, but the Sudanese government is really burning all its resources. So sanctions will be less hurtful than they were against South Africa, which had such a well known power structure to attack. But also in South Africa, hurting the government had ripple effects on the black majority, but in Sudan, hurting the government will not make any difference in the lives of people in Darfur since they don't get public good from the government in the first place.

George: How would DUMAC identify the most effective targets for divestment? Answer: you would have to have a permanent dialogue with companies about their actions in these countries, because their investments/actions will always be changing.

Ralph: So the central gov't is not in control of the many groups fighting amongst each other? Answer: That's what the Sudanese government is trying to sell to the international community, and with such a vague power structure it's hard to target individuals for their responsibility in the events. But they did not just slightly fan some previously existing divisions between ethnic groups—they generated the results intentionally through their own actions.

Ralph: Will divestment hurt the government? Answer: It will if you target the oil sector the most. In the civil war in the south, in 1999, the government spent $240 million on the army, but most of that funding came through Islamic groups directly to the Army, bypassing the state. The new oil revenues allowed the army to cut off the Islamist movement and increase their funding—it's not enough to completely upgrade the army, but it's enough to distribute arms and assistance to tribal militas.

Peter: How would you vote on this committee? Answer: I just want to give you the facts, not tell you how to vote. I recently wrote an Op-Ed piece (Washington Post wouldn't run it but LA Times did) it said if the U.S. calls it genocide, why isn't it sending its people there to end it? But I learned that if you start arguing in the piece that it was genocide, then you have to spend the rest of the piece defending the use of that term. If you just use the word genocide from the start without qualification, no one will ask for your reasoning. Similarly, if Duke says flat out divest, no one will question it, but if you qualify it to any degree, Duke opens itself to a long discussion on the qualifications.

Martin: Are there other things that Duke can do to help in Darfur/Sudan/Africa, either financial or symbolic? Answer: First, a tactical argument: the fragmentation of rebel groups has dissolved the clear good/evil divisions in conflict, so there's no clear story anymore. This actually may assist Duke if it is looking for more a nuanced response. Second, it's a good idea, I haven't thought about it, but I think that the best Duke could do was make the Sudanese voices heard. You don't hear from the Sudanese what their society as a whole thinks about the conflict. Duke can do what it's really good at—have three day conference with journalists, refugees, academics, critics—people who can write editorials in the NY Times—and bring the conflict back into the media. Third, a measure of divestment from companies involved in the oil sector and stalling for time to wait for clearer answers might be a cynical, but pragmatic, choice too. There is a list of 60-65 companies, with 20 in the core sector, that could show you what companies to approach in this middle way.

Ralph: There are some direct investments that we can clearly pull, but a lot of the investments are commingled in huge pools that are impossible to divest single stocks from. Answer: I see this, but the situation in Darfur is so unclear that there is less pressure to have a clear, complete divestment strategy.

George: What parts of Africa are awful for human rights abuses? Dafur has an economic growth rate of 3%, less than the 5% you like to see for a growing economy. Africa as a whole had 5% growth in 2006, but that is all linked to oil and natural resources, as raw materials have all gone out and no one talks about trade anymore. Sudan has had a growth rate of 8% for the last few years, so you can actually make money there, but you would not thrive on your investments there. There are few places you should invest in Africa—short term profits exists, stretching at most to middle-term investments in S. Africa, Ghana, or Mauritius.

Ralph: Sounds like the country's in chaos, is that fair? Answer: Chaos, not so much. Remember, what the former West Germany gives to the former East Germany in a year is more that the entire world gives in development aid to the third world. But if you go there, you will see that money and competent people and institutional backup have not yet created an equal level of development in the two former Germanys, so we know less about what provokes development than ever. But the human/social capital element is so important, and you have to build administrative traditions and accumulated knowledge over several generations to change a society. If you put an African in a western government and they will perform wonderfully, but if you put me in a poor African newspaper, and I'll be a bad journalist because I'll go unpaid, etc., and will make the same choices that they make.

Runeet: Is it possible that restrictions will be harmful to Africa's development? Answer: I think it's a legitimate question that applies to about every country except Sudan. In Sudan, the capital is grabbing everything it can from the provinces. I would not be preoccupied with divestment's effects on the people of Darfur, because the government does nothing for them now.

Peter: Isn't there a chance that destabilizing the central government will lead to an even more unstable and worse situation in the country? Answer: I don't think so. There was peace negotiation in the South while there was conflict in the West, but the Southerners couldn't care less about the West. They were preoccupied with getting a national referendum in 2009 to get a separate state, because they are at least as racist as the Arabic peoples and don't want to share a state with them. It may not be ineluctable that Sudan splits, but there are many political forces pushing it in that direction.

4:00 Stephen ends

<u>ANDRES LUCO, STUDENT ACTIVIST</u>

4:10 Andres begins presentation *(presentation is attached at the end of the minutes)*

4:39 Andres ends

Martin: I'm wondering about the two pronged strategy between commingled and direct investments, can you explain what other universities have done for each? I'll pull up the Task Force Report, which lists what the universities have done. University of Chicago has had a student campaign initiated there, UC system and Stanford have restricted their investments—Stanford divested from direct holdings in four companies in 2005. The Task Force prefers that letters be sent to fund managers that list companies that universities would like to be divested from.

Martin: What school has a model policy? Andres: Harvard's policy is the first place to start. They divested 4.4 million from PetroChina, and had a committee write a recommendation for divestment, but is still indirectly invested in PetroChina, and student groups are still active in that. I don't know of any schools that have divested from commingled funds.

Question: Who publishes the list of scrutinized companies? The Task Force creates that list and maintains it, as companies go on and come off the list regularly. You need to ask for it, because they don't keep it publicly available for fear that stale copies will linger on the web.

Tracey: How does your group approach the problem of commingled investments? Andres: As a calculation of what's feasible to push universities to do right now, the Task Force does not make recommendations on commingled funds. It only addresses direct investments, but in the future, when that task is done, the Task Force may start putting pressure on commingled funds. It does not want universities to face prohibitive losses because of divestment.

Peter: If you make that concession to pragmatism, where is principled line that Duke should draw about divesting worldwide? Andres: Part of the answer is to approach this on a case-by-case basis. Some countries will not respond as dramatically as Sudan does to the threat of divestment, so those countries aren't as good candidates for divestment. There is momentum in this movement, which gives hope and energy to the Task Force?

Peter: But doesn't that pragmatic approach undercut the Task Force's push for a "Clean Hands" policy, since Duke may still have investments in other "dirty" countries? Andres: The "clean hands" is a function of how much power you have to make a difference. This particular Sudan policy is known to be effective, so Duke has more of a responsibility to follow it.

Tracey: Other areas this will make a difference in the next couple of years? Andres: Possibly Burma, because of the Chinese government's involvement in propping up the Burmese regime. But the Task Force does not want Duke to incur large losses just to have "clean hands"

Peter: The rebel groups are complicit in human rights abuses in Sudan too, and the government is not really in control of the Darfur region, which undercuts the efficacy of divestment. Andres: It's true that Duke doesn't have leverage over all of the actors, but it doesn't take away the Sudanese government's responsibility for atrocities.

Martin: What is reasonable amount/dollar number/% of investment for Duke to give up when it divests? Andres: The Task Force has a number it recommends, a maximum percentage of revenue of loss it suggests is reasonable. If by divesting Duke gets in an extreme disadvantage to do its mission in comparison to peer institutions, that is too much. For example, for pension funds, a 0.5% loss in value is the limit the Task Force gives as reasonable. Peter: But Duke gained 25% last year, so that would be in effect a 25.5% loss.

PUBLIC FORUM:

6:04 George starts, explains that Duke's holdings are only indirect. Duke has zero direct holdings in Sudan.

Geoffrey Mock starts *(Note: his full statement is attached at the end of these minutes)*. Amnesty International does not endorse boycotts generally—it takes no position on divestment from Sudan. It tries hard to focus on human issues, not on political issues. But Amnesty considers activism a part of investment, and considers not engaging human rights issues to be a stand in its own way. He noted that the government of Sudan signs agreements and then obstructs their implementation. Oil is the key economically for Sudan, and four companies dominate that field—three of those companies are state-owned of other countries with publicly traded subsidiaries.

Question to Geoffrey Mock: What is pressure? Answer: Stockholder resolutions, letters to big investors. John Mack may be a person to target because of his Duke ties.

Andres discussed the Sudan Divestment Task Force and their suggestions to universities (the examine, engage, and divest process).

Tracey makes it clear that Andres is not on the ACIR.

George starts with introductions of all of the ACIR members present. All members introduce themselves.

George asks Geoffrey Mock why Amnesty doesn't take a stand? Answer: historically, they report on human rights, don't want to spoil its non-partisan reputation. But it believes there is no such thing as innocent/ignorant investing. That itself is a moral choice.

Andres discusses blanket vs. targeted divestment.

Question on direct vs. indirect investments—what % of Duke's indirect investments are in Sudan? Tracey answers: $13 million of $5 billion might be, we don't know exact number. It is pointed out that 0.5% of $10 billion is $50 million—an amount that Duke can be very useful to Duke.

Andres clarifies the SDTF policy—there is no policy for divestment directly. Commingled funds don't need to be divested from.

Geoffrey: is this the first time ACIR has met?

George: we work under tight guidelines.

Question: what is the deadline?

George: BoT meetings are deadline, but ACIR reports to President.

Question: Any other areas for divestment?

George: What about genocide? What is UN definition? What do you guys see as definition?

Claudia Koonz, Duke Human Rights Center, answers: this isn't genocide, it's a civil war. "Genocide" suffers from definition creep. Eastern Congo is much worse with more corporations responsible.

Robin Kirk, Duke Human Rights Center: "Genocide" is a magic word for oppressed groups, but "crimes against humanity" can work well instead. For example, Columbians have tried to get genocide to include political party genocide.

Divestment arose for apartheid, which is the non-genocide—not killing a group, but keeping them for cheap labor. Crimes against humanity fits for both apartheid South Africa and Darfur.

Robin says if crimes against humanity is the standard for BoT, then they <u>do</u> have to revisit investing for every possible case--a broader range of countries would qualify than for genocides.

Tracey: what areas would count under crimes against humanity: Robin: it would be multiple, and it would always shift, but the policy would need to be pointed, effective, with a defined purpose.

Peter: If you start policy with principles, doesn't it get too blunt and broad?

Robin: Not necessarily if crimes against humanity are "exceptional"—it can be a high bar.

George: our definition to act is when "a company's activities or policies cause substantial social injury"—a lower bar.

Andres: the more capacity you have to change a situation, the more your moral obligation to act.

Martin: if we have to incur costs, we should maximize the effect, e.g. we should act locally instead of globally.

George: So we could spend $ on a conference on Sudan, instead of divesting.

Crowd: isn't that hypocritical? And do we need another conference on campus?

Martin: what about giving aid directly?

Geoff: by working with activists in Sudan.

Answer: but no activists in Sudan have clean hands—probably having the Olympics in China is the best thing for Darfur because of China's close economic ties to Khartoum.

Robin: Divestment isn't a cure-all.

George: So what can Duke do?

Answer: DukeEngage can set up opportunities in refugee camps in Chad/Cairo/Nairobi—some place stable.

Question: Divestment is symbolic, but can Duke afford not to take a public stance?

Robin: Divestment didn't kill apartheid South Africa, but the repeated public shaming made a big effect.

Robin: the anti-sweatshop campaign for Duke's Tshirts is a good example too. Duke's example and leadership had great value for that campaign. There isn't just an economic value to the activism.

Martin: is it more important to do something quickly?

Robin: No, it should be done carefully.

Question: Is there any way to create a direct correlation between divestment and UN peacekeeping success?

Andres: Sudan responds to economic pressure.

List of Supplements to Transcript of October 16, 2007 Meeting

Andres Luco's presentation to the Committee

Sudan Divestment Task Force's testimony to the U.S. Senate

Sudan Divestment Task Force's sample university divestment resolution

Geoffrey Mock's statement at the public forum

Duke out of Darfur: the case for Sudan divestment

Presentation to the Advisory Committee Investment Responsibility

Tuesday, October 16, 2007

1

What is targeted divestment?

- **Targeted divestment** is a divestment model advocated by the Sudan Divestment Task Force. The Task Force is a joint project of two other non-governmental organizations, the Genocide Intervention Network, and STAND: A Student Anti-Genocide Coalition.
- These organizations have been the backbone of a growing nationwide movement to use the assets of states, cities, universities, pension funds, asset management firms, and other companies as leverage in changing the operations of a group of so-called "**scrutinized companies**" known to have extensive business ties to the government of Sudan (hereafter "GoS").

2

What is targeted divestment?

- The SDTF research team uses three criteria for identifying companies whose operations in Sudan warrant scrutiny:

  1) The company engages in business with actors or projects that directly or indirectly benefit the government of Sudan through providing revenue or arms to the government or by enhancing the government's capacity to resist international pressure on Darfur; AND
  2) the company provides minimal benefit to those outside of government or the small circle of government supporters based mainly in the Khartoum state; AND
  3) the company has no significant corporate governance policy to address how its business in Sudan may contribute to the genocide in Darfur.

- Of over 400 multinational companies operating in Sudan, only about two dozen meet these criteria.

3

What is targeted divestment?

- By contrast, companies meeting *any* of the following criteria are not scrutinized companies:

1) Companies contracting exclusively with the Government of South Sudan.
2) Companies primarily participating in the provision of goods or services that principally and directly benefit marginalized populations in Sudan.
3) Companies involved in the distribution of general downstream consumer goods and services within the country.
4) Companies whose primary purpose in Sudan is humanitarian, medical, journalistic, educational, or any other "social good."
5) Companies whose activities in Sudan are currently dormant.

4

What is targeted divestment?

- The criteria exempting a company from scrutinized status are motivated by two concerns:

  - Maximizing impact on the GoS's behavior, while minimizing potential harm to innocent Sudanese civilians.

  - Maintaining consistency with the US federal government's sanctions against Sudan, which recently relaxed most investment restrictions related to South Sudan but retained a country-wide ban on oil investment.

5

What is targeted divestment?

- From the perspective of Duke University, the targeted divestment model proceeds through three phases:

1) **Examination.**
2) **Engagement.**
3) **Continued Engagement or Divestment.**

- On April 2, 2007, three graduate students met with Provost Peter Lange to discuss the nature of Duke's investments with respect to Sudan. Having cross-checked the University's holdings against the list of scrutinized companies compiled by the SDTF, Provost Lange reported that, as of February 2007, Duke had withdrawn all direct investments in the scrutinized companies.

6

Why divest?

- Arguments in favor of restricting the University's investments in the scrutinized companies.
- ***The Strategic Argument:*** targeted divestment can effect changes in the GoS's behavior.
  - The GoS has historically been responsive to economic pressure.
  - The current divestment movement is having a palpable impact upon scrutinized companies which the Sudanese government has been unable to ignore.
- ***The Clean Hands Argument:*** whether or not targeted divestment is efficacious in bringing the genocide in Darfur to a halt, the University must refrain from providing financial benefits to Sudan's genocidal regime.
  - The debt-ridden GoS relies on foreign direct investment (FDI) to fund its genocidal military apparatus.
  - If, as the evidence suggests, the scrutinized companies operate in sectors of the Sudanese economy that generate revenue for Khartoum's ethnic cleansing machine, then surely investing in those countries contributes to substantial social injury.

7

Impact on Duke

- The targeted divestment model minimizes potential costs to divesting fiduciaries.
- There should be no lack of financially-equivalent alternatives to the scrutinized companies since the small number of multinational companies remaining in Sudan is similar in nature and size to companies outside of Sudan.
- Evidence suggests that divestment from the scrutinized companies will have a minimal impact, if any, on investment returns.
- Holdings in the scrutinized companies may actually prove costly to the University in the long run.

8

Can we still make a difference?

- *"With varying degrees of intensity, the regime and its assortment of militia allies and turncoat rebels continue to employ multiple tactics to achieve its objectives to destroy the Darfurian opposition, to permanently alter the demographics of Darfur, and to deny Darfurians a meaningful role in national politics…"*

  —John Prendergast and Colin Thomas-Jenson, ENOUGH project, "Echoes of Genocide in Darfur and Eastern Chad," http://www.americanprogress.org/issues/2007/09/pdf/echoes_darfur.pdf

9

Can we still make a difference?

YES!!

Displaced Sudanese children eat at the Sakali Displaced Persons camp in the city of Nyala in Sudan's strife-torn Darfur region, February 2007. US envoy to Sudan Andrew Natsios expressed deep concern on Saturday over the "poisonous" atmosphere between the north and south peace partners as he wrapped up a 10-day visit to the war-torn country.(AFP/File/Mustafa Ozer) Source: http://news.yahoo.com/photo/071006/photos_wl_afp/1ed86fbdd2335d0d33bcf0f9fcf14c80

10

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Testimony of Adam Sterling
Director, Sudan Divestment Task Force, a project of the Genocide Intervention Network
United States Senate Committee on Banking, Housing, and Urban Affairs
October 3, 2007

Thank you, Mr. Chairman; it is an honor to testify today on behalf of the Sudan Divestment Task Force and Genocide Intervention Network in support of HR 180, the Darfur Accountability and Divestment Act.

As the director of the Sudan Divestment Task Force, the organization at the forefront of the Sudan divestment movement, I will be addressing the importance of foreign corporate interests, specifically oil companies, in Sudan, how targeted divestment has already proven successful in encouraging foreign companies to use their enormous leverage to address the crisis in Darfur, and how HR 180 will serve to encourage and expand these efforts.

By any account, Sudan is a poor country. The average yearly income is under $650 and the country's foreign debt exceeds it gross domestic product. Shockingly, and despite these statistics, Sudan produces over 500,000 barrels of oil per day and has at least 6.4 billion barrels in proven reserves. In 2006, oil provided the Sudanese government with over $6 billion in revenues and accounted for 90% of the country's revenue from exports.

The extraction of oil requires reserves, capital and technical expertise, and while Khartoum effectively controls Sudan's reserves, the government relies on foreign companies to translate those reserves into revenue. In fact, Sudan's national oil company, Sudapet, maintains no more than an 8% equity share in any of the country's producing oil blocks, yet the government receives a majority of the revenue generated from Sudan's oil fields. Unfortunately, revenue from Sudan's oil has not been used for debt relief or development. In fact, since the first barrel of oil was extracted from Sudan, Khartoum has allocated the majority of its revenue for military expenditures. According to a former Sudanese finance minister, interviewed by the New York Times, over 70% of the government's share of oil profits is spent on its military.

The bottom line is that Sudan's oil industry serves as a financial lifeline to Khartoum, and the foreign companies that support this industry have massive leverage to engage Khartoum and contribute to a peaceful and sustainable solution in Darfur. Targeted Sudan divestment, a policy authorized and encouraged by HR180, provides an effective tool to pressure companies to use this leverage in an effective, responsible and sustainable manner.

The targeted model surgically focuses only on the roughly two to three dozen problematic companies that are helping to exacerbate the situation in Darfur without providing benefits to any marginalized populations. It is critical to note that targeted divestment does not broadly force these companies to leave Sudan; it encourages them to use their enormous leverage in a constructive way to contribute to a solution in Darfur and only utilizes divestment if the companies fail to respond.

Furthermore, if companies do fail to respond to engagement within a given timeframe, and divestment takes place, there is evidence to show that divestment from this very small set of companies will have an extremely minimal impact, if any, on investment returns. For example, a historical analysis by the Sudan Divestment Task Force shows that the top peer replacements for these companies have consistently performed better over time (see enclosed chart).

While targeted Sudan divestment significantly minimizes any potential harm to investment portfolios, the movement has already proven to have a tangible impact on targeted companies. La Mancha Resources, a Canadian mining company, and the primary foreign player in Sudan's mineral extraction industry, recently took extraordinary steps in response to the situation in Darfur, even though all of its operations take place on the other side of the country. After weeks of engagement with the Sudan Divestment Task Force, the company publicly committed to refraining from new investment in the country until a peacekeeping force consistent with United Nations Security Council Resolution 1769 has been deployed in Darfur with the full compliance and cooperation of the Sudanese government and to increase its funding of humanitarian efforts in Sudan by contributing to projects in Darfur. This contribution comes in addition to the existing humanitarian efforts the company has been supporting for several years in the area of its operations. Additionally, the company's President recently met with Sudan's Minister of Energy & Mining, Dr. Awad Ahmed al Jaz, to discuss the situation in Darfur and to encourage the Government to fully comply with the implementation of UNSCR 1769. With their substantial leverage in the country, corporations have an extraordinary potential and responsibility to contribute to a solution in Darfur, and to encourage sustainable development and long term peace in Sudan. La Mancha provides a perfect example to demonstrate the power of targeted divestment to generate the pressure necessary for corporations to recognize the urgency in Darfur and act on this responsibility.

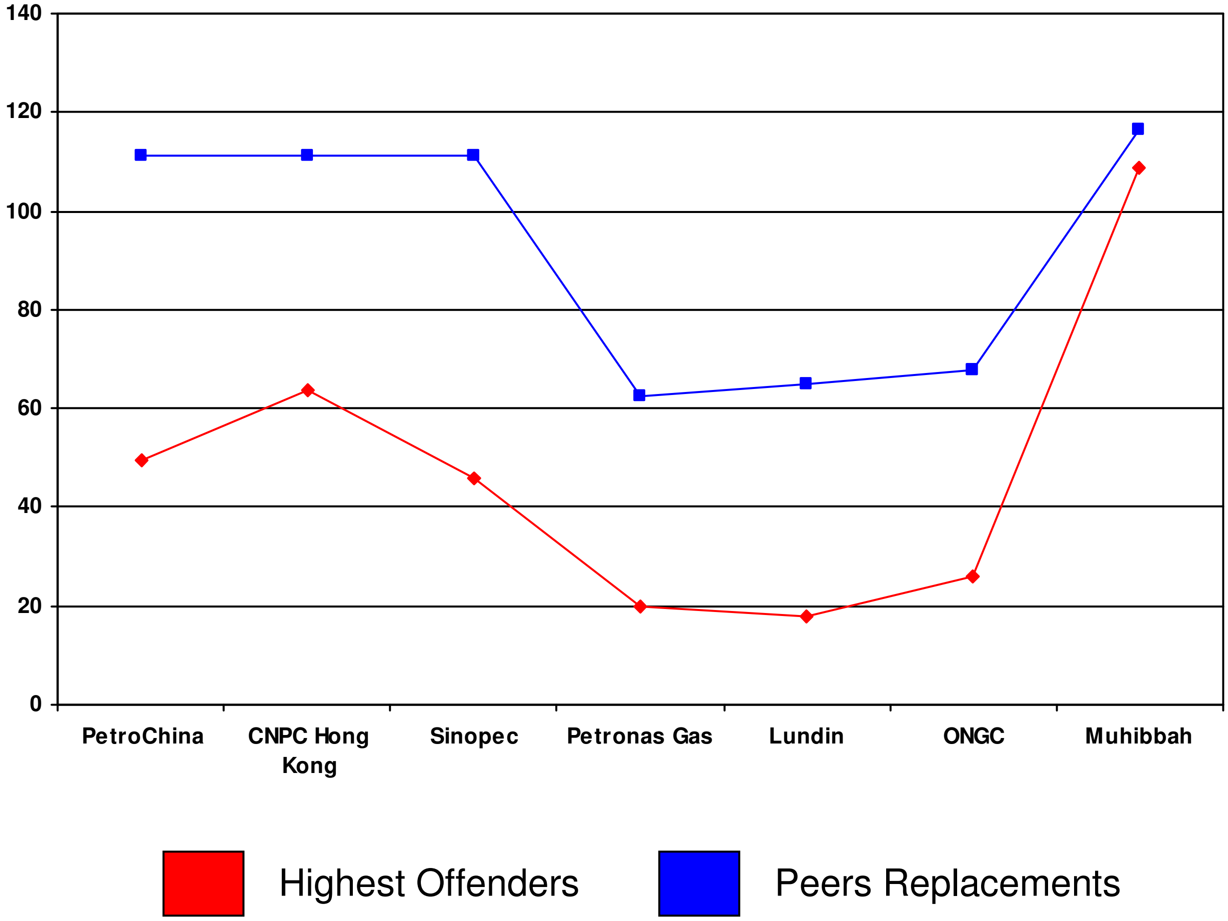
Since 2005, 20 states and over 50 universities have adopted Sudan divestment policies. The movement has rapidly spread through Europe: in July the European Parliament unanimously adopted a resolution calling on European Union members to support targeted Sudan divestment efforts. In addition to La Mancha, six major foreign companies, CHC Helicopter, ABB, Siemens, Rolls Royce, ICSA of India, and Schlumberger, have ceased problematic operations in Sudan or significantly changed their behavior in the country since the proliferation of the Sudan divestment movement.

While the administration has expressed concern that state efforts may conflict with federal ones, HR 180 simply ensures that states and municipal entities move forward with divestment in a unified and targeted fashion that is consistent with and complimentary to federal foreign policy. This includes common carve outs for South Sudan and exemption for companies authorized by OFAC to operate in Sudan. Perhaps most importantly, HR 180 ensures that divestment policies for these local entities all expire under the same conditions, benchmarked to federal actions and statements.

Thank you the opportunity to provide testimony today Mr. Chairman, I am happy to answer any questions you may have.

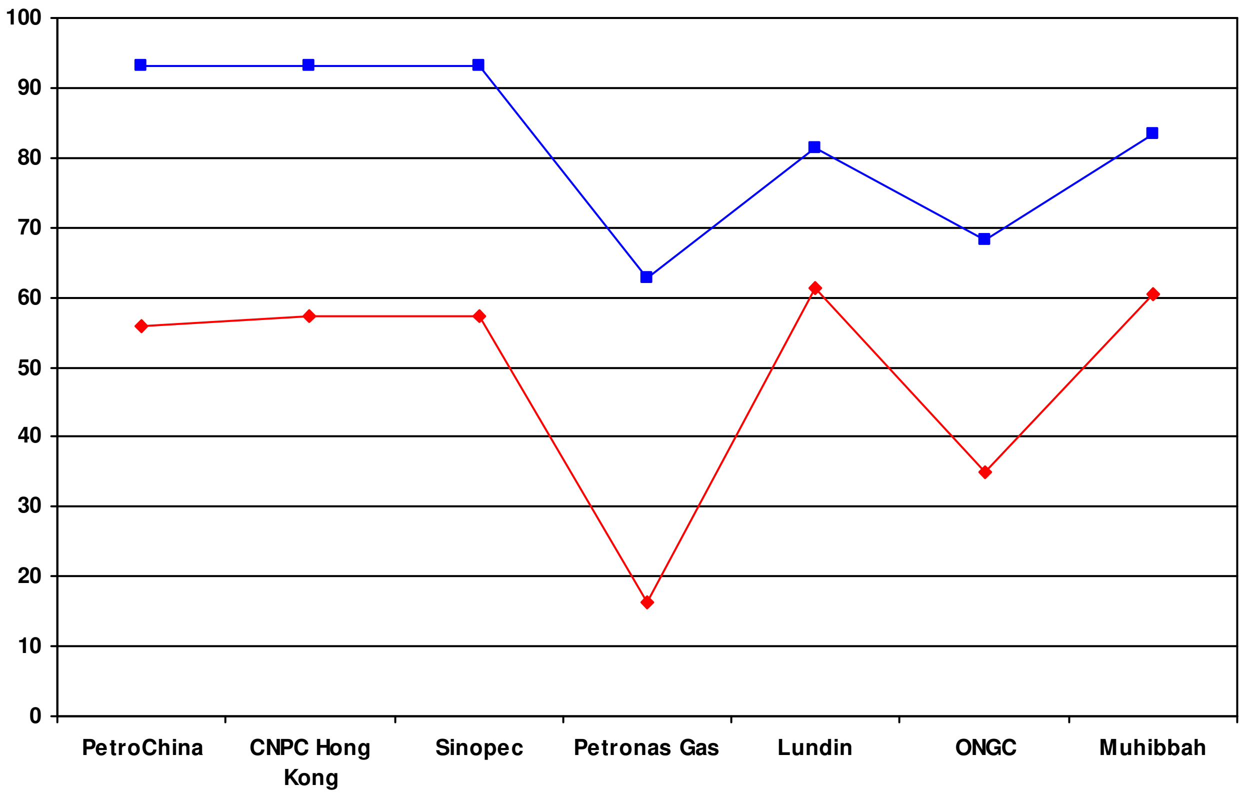
3 YEAR RETURNS

Highest Offenders in Sudan versus Top Peer Replacements



5 YEAR RETURNS

Highest Offenders in Sudan versus Top Peer Replacements



Presented by the Sudan Divestment Task Force with data from Bloomberg LP

Sample University Board Divestment Resolution

WHEREAS, the government of Sudan has engaged in a policy of genocide against its own civilians in Darfur through use of its military and through sponsorship of attacks by armed militias known as the *janjaweed*; and

WHEREAS, the *janjaweed* and military of the Sudanese government are responsible for razing over 80% of Darfur's villages, gang-raping civilians, slaughtering 400,000 victims, displacing 2.5 million more, using forced starvation as a weapon of war, and impeding access of humanitarian aid to the up to 3.5 million Darfurians that are now reliant on assistance; and

WHEREAS, the Sudanese government and *janjaweed* militias have continued their attacks despite the signing of the Darfur Peace Agreement; and

WHEREAS, the Darfur crisis represents the first time the US Congress, State Department, and President have declared a genocide while the atrocities are ongoing; and

WHEREAS, certain international companies operating in Sudan bring significant revenue, cover, and arms to the Sudanese government while providing little benefit to the majority of Sudan's citizens; and

WHEREAS Khartoum has funneled the majority of foreign direct investment from these companies into military expenditures used to perpetuate the genocide while neglecting needed development projects in the Darfur region; and

WHEREAS the government of Sudan has a history of remedying egregious behavior in response to economic pressure; and

WHEREAS the current Sudan divestment movement now encompasses nearly 100 universities, cities, states, and private pension plans, including **[relevant campaigns in same/nearby state]**; and

WHEREAS the divestment movement has already gained the attention of the Sudanese government and altered the behavior of some companies operating in Sudan;

[WHEREAS…University-specific clauses – for example, if the school has an SRI policy or has divested in the past, include relevant language from it here]

THEREFORE, BE IT RESOLVED, that **YOUR INSTITUTION'S GOVERNING BODY**, or its investment managers, shall examine **YOUR INSTITUTION'S** retirement investment funds, endowment funds, and short-term investment pool to determine if **YOUR INSTITUTION'S** funds are invested in scrutinized companies operating in Sudan. Scrutinized companies shall be defined as those companies that:

1. Engage in business with actors or projects that directly or indirectly benefit the government of Sudan through providing revenue or arms to the government or by

enhancing the government's capacity to resist international pressure on Darfur; AND

2. Provide minimal benefit to those outside of government or the small circle of government supporters based mainly in the Khartoum state; AND
3. Have no significant corporate governance policy to address how a company's business in Sudan may contribute to the genocide in Darfur.

Companies that meet any of the following criteria shall not be considered scrutinized companies:

1. Companies contracting exclusively with the Government of South Sudan.
2. Companies primarily participating in the provision of goods or services that principally and directly benefit marginalized populations in Sudan.
3. Companies involved in the distribution of general downstream consumer goods and services within the country.
4. Companies whose primary purpose in Sudan is humanitarian, medical, journalistic, educational, or any other "social good."
5. Companies whose activities in Sudan are currently dormant.

Unless other means are established by **YOUR INSTITUTION'S GOVERNING BODY** to identify scrutinized companies, each manager shall execute the above policy by consulting, on a quarterly basis, a list promulgated by the Sudan Divestment Task Force.

BE IT FURTHER RESOLVED, that if it is found that **YOUR INSTITUTION'S** funds are being invested in scrutinized companies operating in Sudan, **YOUR INSTITUTION'S GOVERNING BODY AND/OR ITS INVESTMENT MANAGERS** shall undertake the following procedure with respect to these identified companies:

1. Engage these companies for a period of no longer than **[3 months]** in an effort to convince them to alter or cease scrutinized business operations in Sudan. Engagement letters are available from the Sudan Divestment Task Force.
2. If a scrutinized company undertakes any of the following actions during the engagement period, they shall no longer be considered a scrutinized company: adopting, publicizing, and implementing a formal plan to cease Scrutinized Business Operations within one year and to refrain from any such new Business Operations; undertaking humanitarian efforts in conjunction with an international organization, the government of Sudan, the regional government of southern Sudan, or a non-profit entity and evaluated and certified by an independent third party to be substantial in relationship to the company's Sudan business operations and of benefit to one or more marginalized populations of Sudan; or through engagement with the Government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.
3. If a scrutinized company does not exhibit any of these changes during the engagement period, **YOUR INSTITUTION'S GOVERNING BODY AND/OR ITS INVESTMENT MANAGERS** shall divest all public securities held in scrutinized companies, excluding public securities held in commingled accounts

[unless the institution is willing to include these] or securities where no financially equivalent alternative is available.

4. If the university is found to hold securities in commingled funds that contain scrutinized companies, **YOUR INSTITUTION'S GOVERNING BODY** shall submit letters to the managers of such funds containing scrutinized companies requesting that they consider removing such companies from the fund or create a similar actively managed fund with commingled holdings devoid of such companies. If the manager creates a similar fund, **YOUR INSTITUTION'S GOVERNING BODY** shall replace all applicable investments with investments in the similar fund in an expedited timeframe consistent with prudent investing standards.

BE IT FURTHER RESOLVED, **YOUR INSTITUTION'S INVESTMENT MANAGERS** shall continue to review your investments and take action to restrict investments in scrutinized companies as described above on a quarterly basis.

BE IT FURTHER RESOLVED, **YOUR INSTITUTION'S INVESTMENT MANAGERS** shall not enter into further investments in offending companies until the Sudanese government stops its military and militia forces from committing genocide in Darfur.

Geoffrey Mock's statement to the ACIR:

Thank you for letting me talk. My name is Geoffrey Mock, a 21-year Duke employee. I currently serve as manager of internal communications for the Office of news and Communications. Outside of Duke, I also serve as the Egypt Country Specialist for Amnesty International USA. I want to note that Duke has a very active Amnesty International chapter, led by some energetic students and supervised by classical studies professor Peter Burian. The timing of this session is valuable in that just last week Amnesty and a coalition of groups released a guide to responsible investing for colleges and universities. I would like to make a very brief overview of the principles in these guides and then more substantially relate them the Duke and the current situation in Darfur.

With a few rare exceptions, Amnesty International does not support boycotts. Boycotts are seldom effective and in some cases may result in new human rights problems, even as they are solving others. On divestment, Amnesty International takes no position positive or negative. Amnesty has never undertaken a divestment campaign.

As an alternative, Amnesty recommends using shareholder activism to achieve change, particularly on international issues such as Darfur. The guide we released last week is based on the idea that shareholder advocacy is part of the fiduciary duty of college and university trustees and endowment officials. It states "investment in the reduction of social and environmental costs can enhance shareholder value".

One of the values in the guide is transparency. One guiding principle for college and university investments is that the institution should be open about where their investments are going and the consequences of those investments. I recognize that private college and universities usually keep investments close to the vest; In a situation such as Darfur, it makes it difficult for the university community to participate in investment discussions. This is one issue I would encourage you to examine very closely.

But the greatest priority is using the voice that these investments allow us to have in Darfur. The Khartoum government has a longstanding, consistent record of signing international agreements and then obstructing their implementation. This has to change The government's agreement to 26,000 UN/AU peacekeepers, while welcome, does little to reassure the world community that the peacekeepers will be able to effectively do their job. Urgent pressure from key players – both economic and political – is needed to ensure that Khartoum moves forward on these efforts.

Four oil companies have come to dominate Sudan's oil industry: China National Petroleum Corporation (CNPC), China Chemical and Petroleum Corporation (Sinopec Corp.), Petroliam Nasional Berhad (Petronas), and Oil and Natural Gas Corporation of India-Videsh (OVL). Revenues fueling the Darfur conflict are largely generated from oil. Ninety percent of Sudan's export income is derived from oil, and a majority of this revenue goes towards military expenditures, while virtually none supports social development.

Who are investing in these four companies? *Actually, they're investing in the subsidiaries of the companies, except for Sinopec Corp., the only publicly traded company of the four.*

The list includes:
Warren Buffett - CEO, Berkshire Hathaway Inc.
James Dimon - CEO, JP Morgan Chase
Charles Johnson - Chairman of the Board, Franklin Resources
Larry Clemenson - Capital Group Cos/American Funds
Edward Johnson - Chairman, Fidelity Investments
Charles Prince - Chairman and CEO, Citigroup
John Brennan - Chairman and CEO, The Vanguard Group
James Kennedy - CEO, T. Rowe Price
John Mack - CEO, Morgan Stanley
Stanley O'Neal - Chairman, CEO & President, Merrill Lynch & Co.

The top priority in Darfur should be to allow 26,000 UN and African Union peacekeepers to do their work in the region without obstruction in compliance with UN Resolution 1769. A recent attack on AU soldiers, apparently by rebel soldiers, underscores the complexity of the situation they face. But it is still right that we press the oil companies and their investors to hold the Khartoum government to its commitment to quickly deploy the peacekeepers, and allow them sufficient resources and authority to fully monitor the region, protect the citizens and investigate human rights violations. As I understand your committee's charge, you advise the president on proxies, corporate communications and shareholder resolutions. This is where I urge you to focus your efforts in this matter.

ADDENDUM J: **The Committee vote of November 13, 2007**

On November 13, 2007, the Committee deliberated and voted on the recommendation to the President as written in the cover letter to this report.

ADDENDUM K: The minutes of the ACIR meeting September 9, 2007

ACIR MEETING 9/7/08
2 – 3 pm September 7, 2007

Present:
Runeet Kishore
Paul Slattery
George Tauchen
Tori Nevoy
Martin Smith
Ralph McCaughan
Tracey Futhey

Not Present:
Peter Feaver
Laura Wellman
Gordon Williams

Minutes:
The chair (George Tauchen) went through introductions and committee member list. He also handed out the background documents for committee members to review outside of meetings.

Attention was called to the two page document "**Outline of Mandate and Issues for the ACIR"** (hereafter termed the outline). The outline provided the underlying structure of the meeting. These minutes are written around the outline, which is attached.

The chair went through **Parts I-V** of the outline:

Part I

1. He described the two committees, PSC and ACIR, and he highlighted the relevant text from the Provost's letter of 8/28/2007. He pointed out the reasons for ACIR's existence.

Part II

1. The chair noted the specificity of the text from the Provost's letter. Tracey wondered if the point of ACIR is to recommend that a policy be made, or to make the policy itself. George stated that the Committee is to make a policy and there was no debate on that point. He also highlighted the requests from the concerned students to the Provost, which triggered this referral of the matter to ACIR by the PSC.

Part III

1. The committee made aware of the narrowly defined set of topics for the agenda.

2. Procedures for conveying recommendations to the President were reviewed.

Part IV

1. The chair noted that the mandate implies ACIR should take a final secret vote. Proxy votes via email are acceptable and confidentiality can be maintained. No debate on this point.

2. It was agreed that the writers of the student letter to the Provost have an obligation to help the Committee with the investigation part of its mandate.

3. and 4. Duly noted.

5. The outline had a typo—the hopeful submission date for the recommended policy is December 2007, not December 2008 as printed on the handout.

Part V

1. The chair described the issues behind this.

2. The chair gave his interpretation. Ralph said that in 1985-86 there was a similar committee formed to discuss divestment from South Africa. He said that the media and public expressed the unified feeling that investment would be helping that government. At around that same time, DUMAC was created to split the process of investing the endowment away from the University, to make it more independent from public and university involvement. The public and ACIR cannot be the DUMAC police and create all of their guiding investment strategies. ACIR's decision could be a very general statement to the Board of Trustees that DUMAC needs to be socially responsible in investments. Runeet: Companies listed on DUMAC's document are often infrastructure development companies on behalf of the UN or NGOs—should DUMAC deny them funds for working in Sudan? George: No U.S. company can do business with the Sudanese government, so the issue is really about investing in foreign companies. Tracey: Saying to DUMAC "only invest in U.S. companies" is a clumsy sledgehammer statement. Martin: Are mutual funds included in this discussion? George: Yes, DUMAC has already considered them on this issue.

3: Discussed in flow of the conversation

4. Discussion of authoritative sources: There is incorrect information out there about Darfur. Tracey: Websites cannot be trusted to be authoritative by their looks. ACIR should talk to other universities to see how they dealt with this issue and what research they can share with ACIR. Fourteen schools have a policy on Darfur investment—how did they get there, and what does their policy say? Ralph: The Board of Trustees wants a

general statement—a specific list of companies is up to DUMAC or others, not the BoT. They want ACIR to produce a statement of Duke's principle on the issue. Tracey: We could learn from other schools who have decided not to create a policy, too. Paul: It seems that the core competency of the ACIR is not to be investigative journalists on this issue. George: I think DUMAC has done a lot of that research already. Ralph, Tracey, Tori: DUMAC has significant of its equity in foreign companies/funds. Paul: What ACIR decides will be a precedent for the rules on all of that foreign investment. George: But we have to follow a limited mandate for this particular committee's scope.

General Discussion:

George: 1st step of ACIR should be to have DUMAC come in to present their policies and procedures. Names suggested were Anders Hall and Dave Shumate from DUMAC. 2nd step is to invite a professor (Steve Smith) to discuss the issue. 3rd step is to bring in student voice via representatives from student groups (we can factor in a lack of interest in the topic by students, if relevant). Tracey: Does Peter Lange think that the 3 students who signed the original letter are the people who should present to ACIR?

Ralph: We can quickly come up with a general statement.

Tracey: Do variances between universities' divestment counts stem from different value judgments on the same data (Williams divested from 26 companies, and USC from 4)? Or from more and less diversified portfolios?

Martin: What about comparisons between Duke and other universities are valid? Universities bigger and smaller than Duke. Martin agrees to take the lead in this investigation.

Tracey: Are particular companies universally divested from by all universities?

George: I will continue to investigate a master list of current "bad" companies.

Runeet: What about Law or Public Policy School experts? George: We can invite them to ACIR meetings or to the public forum, and I will get up with Peter Lange for names.

Martin: What info that ACIR will handle is confidential? All DUMAC materials? George: Any documents that might be confidential can be in the shared listserv private folder.

Next meeting: Should be one big meeting rather than three or four hour-long meetings. Group seemed to like this idea. Tuesday afternoons seemed to work well. Get a classroom, Von Canon, Breedlove, or Allen Board Room for meeting, Page Auditorium for townhall session. May need Peter Lange's help on scheduling these.

The committee agreed to place an ad in the Chronicle for experts to speak at ACIR meeting, and to place an ad in the Chronicle for students to speak at ACIR meeting. Ralph: in each case, they need to contact George or Jim to get on agenda. Tracey: Don't list the date or time of the meeting in the ad.

Provost can also announce to the Deans the need for experts to speak to ACIR, the Deans can then provide names.

Runeet, George, Ralph: Darfur conflict is like gang warfare. No ideological purposes driving the sides.

Paul: If there is an open townhall discussion, have it at a distinct time and place from the formal ACIR meeting.

Ralph: I'd set aside a day for this topic.

Ralph: Who put the big 1 page ads in the NY Times about this topic?

Meeting adjourned at 3:00 pm.

ATTACHMENT TO MINUTES OF 9/7/07

I. How ACIR came into action on August 28, 2007.

1 *Text from Provost's letter of 8/28/07 to Tauchen*

In my role as Provost and Chair of the Special Committee on Investment Responsibility (see attachment #2 – Committee membership), I subsequently met with a delegation from the students on April 2, 2007 and discussed the matters with them. They were pleased that we had no current direct holdings. They also recognized that their campaign was not targeted to change investments in indirect holdings, although they would like the University to do what it can to urge these funds to divest. Following the meeting they promised to get back to me regarding possible further actions they might request, which they did in the letter of April 13 (see attachment #3) in which they formally asked that the University undertake some specific actions with regard to DUMAC's investments and the Sudan.

2 Letter of 4/13/07 from concerned Duke students

1. *Remain directly divested from Sudan.* The university should not directly invest, or reinvest, in the offending companies.

These proposals are addressed to the President's Special Committee on Investment Responsibility, the University Priorities Committee, and any other bodies associated with the review procedures codified in the University's Guidelines on Socially Responsible Investing.

II. The specific issue the President's Special Committee (SPC) put to ACIR

1 *Text from Provost's letter of 8/28/07 to Tauchen*

In light of these considerations, the Special Committee on Investment Responsibility recommends that the Advisory Committee on Investment Responsibility be convened to address the following issue: should a recommendation be made to the President that the Duke University Board of Trustees consider requiring DUMAC to undertake no direct investments in any company on the list of companies previously identified as being heavily engaged in business with the government of Sudan and as listed on attachment 4 (and any subsequent updates of that list)?

III. The Board of Trustees Mandate to ACIR

3. "*The chair* [of ACIR] *shall take as an agenda item **only** matters referred by the President or the SPC.*" (emphasis added).

4. *The ACIR makes a recommendation to the President. Voting members of ACIR who hold divergent views may submit them in writing with the ACIR's recommendation to the President.*

IV. Proposed Procedures for the 2007/2008 Committee on the Darfur Issue

1. The ACIR will take a vote and make a recommendation on the specific issue referred to it. Secret ballot? E-mailed vote is acceptable; confidentiality can be maintained.

2. The committee will, to the extent practicable, ***investigate*** the issue as well as vote and make a recommendation to the President. The Duke community will **be expected** to assist and guide the committee.

3. The committee will consider advisory statements and documents from experts on Darfur.

4. The committee will sponsor or encourage the convening of two (2) public meetings.

5. Deadline: Is late-December 2008 feasible. The President needs time to consider a recommendation and prepare materials in advance of the February 2008 Board meeting. (A timely recommendation for the December 2007 Board meeting appears impractical.)

V. Key issues

1. The investigative versus judicial role of ACIR?

2. The Board of Trustees can be expected to act only on a well documented recommendation with a high threshold for restricting DUMAC.

3. The President therefore can be expected only to put forth to the Board a well reasoned recommendation from ACIR.

4. What sources of information are authoritative?
    a. Reputable newspapers, periodicals, and books.
    b. The U.S. State Department's annual statements on human rights as mandated by congress.
    c. UN documents and resolutions.
    d. Other well defined sources?

5. Exactly what is the list of offending companies? DUMAC's list(s)?

6. Are DUMAC's current safeguards on socially responsible investment appropriate?

7. Other matters ?

ADDENDUM L: The minutes of the ACIR meeting November 13, 2007

ACIR Committee Meeting
November 13, 2007
Minutes

George started the meeting at 3:30pm in room 213 of the Social Sciences building.

Ralph had a couple of edits for the report. George clarified that the resolution for the committee vote must be restricted to the issue of divestment from direct holdings in Sudan, as per the Provost's letter.

Peter: but what we say is that DUMAC has to do the research into "bad companies."
George: Exactly—it's what the state of North Carolina told its pension fund to do.

Runeet: Do we just want to say we'll follow US. State Deparment guidelines?

Ralph: Which list do we follow?

George: We don't know.

Tori: DUMAC will respond by saying their job is to invest, not research social harm.

Peter had more edits to the statement, and suggested DUMAC use the Sudan Divestment Task Force list as the reference, if it's as good as any list is going to be. It also has the benefit that it is generated externally to Duke.

Ralph had edits, and said that DUMAC can gather a list as they communicate with the other university endowments.

Peter had edit—add the phrase "or another comparable list" to give DUMAC wiggle room.

Runeet: this is probably the right move. We should not make a strongly worded statement.

George: I won't vote for this. I think Duke's resources are better served elsewhere, and we don't have the taxing power like state governments do to make up for lost revenue. I'm worried about the precedent this statement sets.

Ralph: The only way to avoid setting precedent is to go outside the committee's charge to make a statement with a larger scope.

Peter: There are dozens of "bad lists" at the US State Department for different countries or crimes around the world, so referring DUMC to the State Department for a list of "bad companies" will not clarify, it will only confuse them. We can't eliminate future precedence by not ruling on Darfur. However, the timing is ripe on the Darfur issue, which may protect Duke from being nickel and dimed in the future. Plus we have relative clarity and specificity on this issue, as well as what restrictions DUMAC is willing to live with. We can move with our moral community if we act on this.

Martin: Remember, there are very few costs to Duke on this issue, so the repercussions are not that big. Example of a much higher cost: divesting completely from China.

Tori: Or Israel.

Martin: But China and Israel issues will not have a clear moral consensus like there is on Darfur.

Vote on the committee's understanding of the revised statement: 9 yes, 1 no.

Rewording of Addendum A:

Sum of the edits: DUMAC doesn't have to monitor world events, but they should expect to be asked for info in the future about moral questions, and should be prepared to answer promptly with data.

The committee agrees that this may not satisfy everyone, but it is defensible.

The meeting adjourned at 4:05pm.

ADDENDUM M: Board of Trustees documents specifying the protocols on investment responsibility (included to make the document self contained).

Provided on following pages.

Creation of President's Special Committee on Investment Responsibility and Advisory Committee on Investment Responsibility

Preamble

The Board of Trustees recognizes that Duke University's ability to meet its educational mission and financial goals requires enhancing the value of the endowment over the long term by investing in companies that achieve real growth. It also recognizes the importance of ethical practices. A mechanism is necessary to assist the President in making recommendations to the Board of Trustees in keeping with the Board's Guideline on Socially Responsible Investing, which is attached. The committees noted below provide such a mechanism.

(1) President's Special Committee on Investment Responsibility (PSC)

The President's Special Committee shall consider proposals from the University community regarding specific investment responsibility concerns, first determining whether there is a credible allegation of social injury on the scale envisioned in the guidelines.

If the PSC finds that an issue merits further investigation, it will refer it to the Advisory Committee on Investment Responsibility (ACIR).

PSC Membership

The President's Special Committee on Investment Responsibility shall be composed of the Provost and the Executive Vice President (or their delegates); the Dean of one of the professional schools; the chair of ECAC or faculty member designated by ECAC; and a young trustee designated by the Board.

The PSC chair shall be appointed by the President.

PSC Operations

The PSC shall examine issues of investment responsibility involving the University's endowment securities. If it finds that a company's activities or policies plausibly cause substantial social injury, and that a desired change in the company's activities could have a direct and material effect in alleviating such injury, the PSC will forward to the President a recommendation that the ACIR examine the issue in greater depth. The PSC will determine, on a case-by-case basis, the threshold of evidence necessary to forward a recommendation for further examination to the President.

The Chair is responsible for setting agendas. The Chair accepts written proposals from any member or group of the Duke community for possible inclusion on the agenda.

(2) Advisory Committee on Investment Responsibility (ACIR)
The Advisory Committee on Investment Responsibility is a University body advisory to the President with the following functions:

a. Receive issues referred to it by the PSC;

b. Monitor trends and activities in investment responsibility that have an impact on educational institutional investors;

c. Conduct research, update Duke's files on companies, and provide analyses when requested by the PSC;

d. Make recommendations to the President on how to vote proxies when the committee believes proxies should be voted outside the standard protocol of "economic interest;" whether to sponsor shareholder resolutions; whether to correspond with the management of corporations in which the University holds an identifiable equity position; when to divest; and on any new issues, which may warrant attention.

ACIR Membership
The Advisory Committee on Investment Responsibility shall include ten voting members: one undergraduate and one graduate or professional student nominated respectively by the Duke Student Government and Graduate and Professional Student Council, one alumnus nominated by the Duke University Alumni Association, three faculty members nominated by the Academic Council, the University Counsel or his or her delegate, the Deputy Treasurer or his or her delegate, and two administrative appointees chosen by the President. Each representative body will be asked to nominate two individuals for each position and the President will select who will be invited to serve.

Members shall be appointed for at least two years and may be reappointed, serving until their successors take office.

The ACIR Chair shall be appointed by the President from among the voting members.

ACIR Organization
The ACIR shall meet on call of the Chair.

The ACIR may ask individuals, from within the University or outside of it, to attend its meetings as consultants or otherwise provide advice and information.

To assist in its review of social responsibility proxy issues, the ACIR will have access to data compiled by or on behalf of the University on companies the securities of which are held directly by the University. It is understood that certain pooled or commingled investment vehicles may not permit the degree of disclosure possible for direct holdings.

ACIR Operations

The ACIR shall examine issues of investment responsibility involving the University's endowment securities and propose to the President recommendations for action by the Trustees. Such recommendations shall take into consideration the following factors: (1) the facts and information the ACIR has gathered in its study of the issues; (2) whether the offending firm's culpability is substantial and proven; (3) the opinions expressed within the Duke community regarding the issues, including the degree of consensus; and (4) the legal and financial impact of the recommended action on the companies in question.

The Chair is responsible for setting agendas. The Chair shall take as an agenda item only matters referred by the President or the PSC.

The ACIR may, at its discretion, sponsor or encourage the convening of occasional public meetings or forums of the Duke community to assess the views of members of the community.

In considering an allegation of substantial social injury, the ACIR shall investigate and analyze the allegation in whatever manner it deems appropriate and may then make a recommendation to the President, provided that the recommendation is first approved by the majority of the ACIR's members. Recommendations may call for voting Duke's shares in shareholder resolutions, making representations to management, divestment of securities, or other action as the ACIR deems appropriate.

The ACIR shall make its recommendation in writing to the President. The recommendation shall be accompanied by factual findings and an analysis of the question involved. Voting members of the ACIR who hold dissenting or divergent views may submit them in writing with the ACIR's recommendation.

Where the ACIR indicates a desire to deliberate on a proxy or divestment issue, the President will, where practicable, await a timely recommendation from the ACIR before taking action.

The President will make decisions on all recommendations for action under this policy.

Role of the President

The President will review the analysis and recommendation of the ACIR and, if he or she concurs, will forward a recommendation to the Board of Trustees.

If the President chooses not to forward the ACIR's recommendation to the Board of Trustees, he or she will explain his or her decision in writing to the ACIR.

An annual report published by the President's office will inform the University community of the issues examined by the PSC, recommendations make by the ACIR, and the disposition by the President's office and the Board of Trustees.

ADDENDUM N: Why the term “genocide” does not appear in ACIR reports.

The committee report and cover letter refrain from using the term “genocide,” which every expert consulted by the ACIR noted that it has been frequently misused in reference to the actions of Sudan. An excellent characterization is available from this quote from Claudia Koonz, a highly respected Duke faculty member and a noted expert on genocide: “… this [Darfur] isn’t genocide, it’s a civil war. ‘Genocide’ suffers from definition creep. Eastern Congo is much worse with more corporations responsible.” (See Koonz’s comments at the Public Forum of October 16, 2007.)

ADDENDUM O: Statement of dissenting voter

November 13, 2007

Tauchen's view and vote on Sudan/Darfur exclusionary investment proposal:

Investment returns and gifts increase the endowment of Duke University. There is no doubt that there are some investment returns, such as proceeds from organized crime activities, that Duke cannot accept. Likewise, gifts that come from suspicious sources or with too many restrictions will also be refused by Duke. So, there seems to be no principle under which DUMAC can operate in a totally unrestricted manner.

At the same time, the use of Duke's investments to influence social policy is largely ineffective and at best symbolic.

Duke excels at its teaching and research mission. The hiring of faculty such as Professor Smith of the Sanford School, an expert on Sudan/Darfur, is a strong move on Duke's part. There are other distinguished members of faculty, Claudia Koonz to name one, whose research and teaching substantively contribute to the knowledge of large scale deaths or murders. In addition, Duke has a Human Rights Center funded by the Office of the Provost. These sorts of activities, backed by the force of academic freedom, represent what Duke can do best to be effective in situations such as the Sudan/Darfur tragedy.

The recent action by the State of North Carolina regarding the pension funds and Sudan divestment is an empty gesture, and so there is no surprise that it passed unanimously. The action does not cover the significant defined contribution plans of professional employees in carriers like TIAA. Furthermore, the pension funds of the defined benefit plans are ultimately backed by the sovereign taxing authority of the state.

Duke University does not have taxing authority. All Duke has is its financial endowment along with the tuition stream and its tangible assets. Unlike a government, Duke cannot levy taxes to meet obligations. Thus, direct or indirect commitments from the endowment can only be made only upon the most compelling of circumstances.

The issue of precedence looms large. Sudan/Darfur is currently on the agenda of the ACIR, but Myanmar is on the near horizon, as is Iran. An exclusionary policy regarding Sudan is likely to lead to further requests for such policies relative to other problematic places in the world. The ACIR would likely be meeting on a regular basis to examine and deliberate on each of these requests, taken one at a time. It is not clear that how that activity would further the teaching and research mission of Duke.

I thus voted no on the resolution in the cover letter to President Brodhead.

George Tauchen