



## Darfur in the Security Council

### Commission of Inquiry Report Released

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On February 2, 2005, the UN Commission of Inquiry - appointed by the Security Council with the full support of the United States to investigate the atrocities in the Darfur region of Sudan - released its report. The Commission spent three months investigating the situation in Darfur. Please visit [http://www.globalsolutions.org/programs/peace\\_security/peace\\_ops/conflicts/COI\\_report.pdf](http://www.globalsolutions.org/programs/peace_security/peace_ops/conflicts/COI_report.pdf) to read the full text of the report.

#### Key Findings:

- **Serious violations of international law by Sudan:** The Commission concludes that the "Government of Sudan and the Janjaweed are responsible for serious violations of international human rights and humanitarian law." The report suggests that these crimes may also qualify as crimes against humanity.
- **Missed the mark on genocide:** The Commission stopped short of concluding that genocide has occurred, although it did note that "in some instances" certain individuals, including members of the Sudanese government, may have committed genocidal acts.
- **Identified individual perpetrators:** The Commission identified specific individuals allegedly responsible for the atrocities, including officials of the Government of Sudan, members of militia forces, members of rebel groups, and certain foreign army officers acting in their personal capacity. The report itself does not name names; the Commission has sent the list of names and the associated files to the UN Secretary General for transmission to prosecutors.
- **Strong recommendation for immediate referral to International Criminal Court:** The Commission report "strongly recommends" referral to the existing International Criminal Court through the Security Council, and explains why other options were rejected, including a new ad-hoc or expansion of existing ad-hoc tribunals.

### Stopping the Violence: Immediate Action Needed

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Immediate action must be taken to halt the ongoing violence in Darfur. It is estimated that 10,000 people a month are dying. Citizens for Global Solutions recommends the following actions:

- **Expand the mandate and size of the African Union monitoring force:** Currently, the African Union (AU) has only about a third of the planned 3,320 personnel in place, and this force has a mandate only to monitor the ceasefire, not to protect civilians. As an immediate first step, the Security Council needs to give the AU force a Chapter 7 mandate to protect civilians, and facilitate an expansion of the force. In the short run, expanding the mandate and increasing the number of troops on the ground will help deter violence, even if the AU force does not have the capacity to enforce a broader mandate immediately. In the longer term, developed countries must support the AU force through commitment of funds, assistance with command and control, provision of communications capacity and other high-value contributions that can increase its effectiveness.

# Briefing Paper

- **No-Fly Zone:** The Sudanese air force has conducted bombings of civilians and NGOs as recently late January. The Security Council should authorize the enforcement of the no-fly zone across Darfur, and NATO should take the lead in enforcing the ban.
- **Arms Embargo and Sanctions:** The Security Council should impose an immediate arms embargo on the Government of Sudan and rebel forces and implement specific sanctions (including economic sanctions) against the government and any associated individuals or businesses.
- **Referral to the International Criminal Court:** In addition to the long-term need for accountability, referral to the ICC would send an immediate signal to the leaders of the genocide in the Janjaweed and in Khartoum that they will be held personally responsible if the bombing, rapes, murders and forced displacements continue. Threatening prosecution may be one of the few incentives apart from targeted sanctions that will personally affect those sponsoring the atrocities. The ICC is the only option for swift and credible justice.

## The Situation in the Security Council

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Currently, a number of issues are on the table in the Security Council. The Naivasha Peace Accord that ended the decades-old North-South conflict in Sudan has a provision for a UN force of just over 10,000 peacekeepers that must be approved by the Security Council to be deployed. The United States is circulating language for a resolution that reportedly includes sanctions, a no-fly zone, an arms embargo and a travel ban and assets freeze for the individuals on the Commission of Inquiry's list. This proposal reportedly includes only general language on accountability. Canada, Australia and New Zealand are supporting a similar package of incentives. Russia and China have been strong opponents of economic sanctions and other strong action because of their oil interests in Sudan. The Europeans do not currently support sanctions because of their desire not to undermine the Naivasha Peace Accord.

On accountability, the U.S. has been circulating a proposal to create a new, temporary ad-hoc tribunal, housed in the facilities of the Rwanda tribunal. The only U.S. objection to an ICC referral is that they don't want to "legitimize" the ICC. Most of the other Security Council members strongly support referral to the ICC. Nine of the fifteen members have joined – and are already paying for – the ICC, which they helped create specifically for cases like Darfur. It has been reported that the African Group supports an ICC referral. Even China and Russia have stated publicly that they would not block an ICC referral.

**The U.S. insistence that a new ad hoc tribunal be created in the face of near universal resistance is burning precious diplomatic capital that should be used to achieve support for sanctions and a stronger AU force. It would be far more useful for U.S. diplomats to spend their time convincing other countries of the need for stronger, immediate actions to halt the violence.**

## Why the International Criminal Court?

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- **The ICC is the only credible, immediate venue in which to investigate the crimes in Darfur.** Creating a new ad hoc tribunal, even if it were housed in the facilities of the Rwanda tribunal, would mean a delay of a year or more as judges were elected, staff were hired and investigations started, during which time evidence could be destroyed and victims and witnesses harassed or killed. The ICC was created specifically to avoid the huge expense and delay of creating a new ad-hoc each time a new

# Briefing Paper

situation came up; it's already up and running with a full staff, judges, and three different cases already on the agenda. The Office of the Prosecutor already has been provided with the budget to start a new investigation this year and has received information and begun analysis of the situation in Darfur. Investigations could begin within a matter of months, not years.

- **The ICC has already been asked by three nearby African countries to investigate crimes on their territory, significantly developing its staff's regional expertise.** The Democratic Republic of Congo, Uganda and the Central African Republic have all asked the ICC Prosecutor, Luis Moreno Ocampo, to look into alleged crimes committed on their own territories. Indeed, the ICC Prosecutor has already received information about the situation in Darfur and begun analysis.
- **The ICC is a permanent institution and would not be affected by attempts by the accused to outlast the tribunal.** Accused individuals and the governments that either support them or have evidence against them would not have as much of an incentive to create delays to "beat the clock," delaying cases until international pressure on the tribunal to wrap up its work ultimately leads to the end of the tribunal.
- **Accountability is an important part of peace.** As we saw all too often during the 20<sup>th</sup> century, peace deals that left mass murderers in power without accountability for their crimes almost always led to renewed conflict and atrocities within a few years. In Rwanda, a peace deal was signed only 9 months before the genocide. Milosevic signed the Dayton peace accords that ended his campaign of ethnic cleansing in Bosnia only to turn right around again and do the same thing in Kosovo. International efforts to ensure accountability – holding the individuals who have committed mass atrocities responsible in a judicial process – are not only an important part of building a stable and lasting long run peace, but also immediately put on notice those committing or directing the crimes that they may have a personal price to pay for continued violence.
- **The U.S. has nothing to lose or fear by its cooperation.** There are no U.S. troops in Darfur. There have been no allegations and there is absolutely no reason to believe that there will be any allegations that any U.S. military personnel have participated in the genocide. Allowing a case to be referred to the ICC and even assisting in the prosecution does not create any legal liability for the U.S. and is actually in line with prior U.S. assertions about the Court's jurisdiction (Visit <http://www.washingtonpost.com/wp-dyn/articles/A31594-2005Jan23.html> to read the article). The U.S. would not become a party to the Rome Statute and U.S. citizens would not become subject to its jurisdiction. Current U.S. law allows us to support a referral to the ICC. The American Service Members Protection Act (ASPA) allows the U.S. to provide "assistance to international efforts to bring to justice . . . foreign nationals accused of genocide, war crimes or crimes against humanity." Congress clearly believed that we should be able to support a referral to the ICC.



## About the International Criminal Court

The International Criminal Court (ICC) is the only permanent international court to try individuals accused of genocide, war crimes and crimes against humanity when there is no other recourse for justice. The ICC prohibits intervention when the national court system works.

- Unless the Security Council refers a situation, the ICC has limited jurisdiction over individuals who are from, or committed crimes in, countries that have accepted the ICC, and in all cases only for the most extreme and systematic crimes.
- The ICC only takes cases when national systems are unwilling or unable to handle them – the Prosecutor cannot take up a matter that has been investigated by national authorities, even if they ultimately decide not to prosecute. The ICC is like a global safety net to ensure that future Pol Pots and Idi Amins do not slip through the cracks of justice.
- The first three situations before the Court were referred by the countries involved, both of which are ICC members. In Uganda, more than 20,000 children have been abducted by rebels to serve as child soldiers and sex slaves. In the Democratic Republic of Congo, militias are raping and massacring thousands of civilians. The ICC Prosecutor is working with both countries to go after the worst of the worst – those individuals directing and planning the crimes – while supporting national efforts to pursue domestic justice for lesser perpetrators.
- The ICC's limited jurisdiction and many safeguards work: the Prosecutor has already dismissed all claims against the U.S. and the UK in Iraq and regarding Israel/Palestine. In the case of the UK, an ICC member country, the Prosecutor emphasized that the ICC could not get involved because the UK has a functioning and fair court system.

**The International Criminal Court is about the world coming together to put to work fundamental American values like accountability, due process, equality under the law and the protection of basic human rights.**

- In the twentieth century, Americans were horrified by genocides in Armenia, Cambodia, and Rwanda. After World War II, the U.S. led the Nuremberg trials to provide justice for Hitler's victims. In 1991, we led UN troops to protect the freedom of Kuwait from the tyranny of Saddam Hussein, and we later led NATO troops to halt ethnic cleansing in Kosovo. The ICC is part of the same mission – to provide justice for victims of atrocities when there's no other recourse and to demonstrate that the world will no longer turn a blind eye to tyrants and warlords who kill and terrorize their own people.
- The ICC helps spread democracy, law and order, and human rights by requiring member countries to reform their laws and judicial systems to meet the ICC's high standards. For example, some countries have had to update their legal codes to more fully define rape as a crime and outlaw the trafficking of women and children.
- Countries like Afghanistan and Colombia joined the ICC to strengthen the rule of law and democracy within their own borders. By joining the ICC, countries like these are putting their leaders – as well as rebel groups, drug lords and warlords – on notice that the rule of law now applies to them, too.
- Americans support the International Criminal Court. Public opinion polls consistently show strong American support for U.S. membership in the ICC, ranging from 54% to 71%. For example, 71% of Americans agree that “given the events of September 11<sup>th</sup>, it is more important for the United

# Fact Sheet

States to work in concert with other nations to establish an international criminal court.” Thirty-seven percent strongly agree, whereas only 8% strongly disagree. (Roper/ASW)

## **The International Criminal Court embodies the highest standards of fairness and justice.**

- The ICC enforces accepted international law, like the Geneva Conventions and the Genocide Convention.
- The ICC includes many checks and balances among judges, prosecutors, member states, and defendants, as well as many built-in safeguards to rule out frivolous cases and protect defendant's rights.
- The ICC includes the highest standards of due process. Monroe Leigh, former State Department legal advisor to Henry Kissinger, said “The list of due process rights guaranteed by the [ICC's] Rome Statute are, if anything, more detailed and comprehensive than those in the American Bill of Rights.” These rights include no trials *in absentia*, the right to cross examine witnesses, protection against double jeopardy, and the right against self-incrimination.
- This Court is governed and controlled by the world's democracies. About 95% of the countries that have ratified the ICC treaty are rated “free” or “partly free” by the nonprofit Freedom House. The ICC member countries are all friends of the U.S. and have no interest in seeking political trials.

## **Cooperation with the International Criminal Court is important to reestablishing American credibility and leadership by demonstrating that we practice what we preach.**

- When leaders think they can get away with atrocities, they foment wars and threaten our security. By enforcing existing international law, the ICC can help spread law and order and break cycles of vengeance, reducing conflict and lessening the demand on the U.S. to help restore order.
- The ICC is another alternative we can use short of intervening in a country. International indictments de-legitimize rogue regimes, ostracizing them from other countries and international business and weakening them domestically. For example, the indictment of Slobodan Milosevic was credited by many in Serbia as critical to his downfall.
- Since Nuremberg, the U.S. has been at the forefront of efforts to ensure justice for genocide and atrocities. By turning our back on the ICC, we are betraying this legacy of U.S. leadership.
- Current U.S. policy in opposition to the ICC is exacting a high cost: it's needlessly using up U.S. diplomatic capital, alienating our allies, distracting from other foreign policy priorities, and hurting U.S. credibility and leadership internationally.

## **The United States should take a “wait and see” approach to ratifying the ICC's Rome Statute while supporting the Court's efforts to bring to justice the world's worst criminals.**

- The U.S. can be a good neighbor to the Court even if it doesn't ratify the ICC statute and accept its jurisdiction.
- The U.S. should bring to bear its unparalleled diplomatic and intelligence resources, like unclassified reports, satellite images and soft power, to help build cases against mass murderers and encourage other countries to cooperate with important investigations.
- The U.S. can participate as an observer in the court's oversight body, the Assembly of States Parties, influencing the Court's development without any cost to the U.S.
- The U.S. can participate in and influence ongoing negotiations about the definition of the crime of aggression, which the Court can't yet prosecute but could be added to its jurisdiction during the 2009 review conference.
- U.S. reengagement with the ICC will help rebuild bridges and heal resentments with the international community. At a time when respect for America abroad is at an all-time low, a positive re-engagement with the Court is a win-win proposition for the U.S.

**Building Peace, Justice and Freedom in a Democratically Governed World**  
<http://www.globalsolutions.org/darfur>

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