

**AMERICAN BAR ASSOCIATION**

**ADOPTED BY THE HOUSE OF DELEGATES**

**February 14, 2005**

RESOLVED, That the American Bar Association calls upon the United States Government to take all necessary and proper actions within its power to end the ongoing atrocities (including genocide, crimes against humanity, and war crimes) in Darfur, Sudan; to provide international humanitarian assistance to the refugees in eastern Chad; and to take steps to secure the referral of the situation in Darfur to the International Criminal Court for investigation and prosecution of the individuals responsible for such crimes.

## REPORT

On May 20, 2004, on behalf of the American Bar Association, President Dennis Archer wrote to the President of the United States with an appeal for immediate action by the United States Government “to address the legal and humanitarian challenges arising from the crisis in the Darfur region of western Sudan.” President Archer strongly recommended that the United States Government: (1) bring all appropriate pressure to bear on the Khartoum government to cease and reverse its “ethnic cleansing” operations in Darfur; (2) call on the U.N. Security Council to establish a Commission of Experts to study the evidence of violations of international humanitarian law in that region; and (3) establish support by G-8 and EU governments for international efforts to address the atrocities in Darfur and to hold accountable those individuals most responsible for such crimes. As of this writing (February 2005), while our Government has taken a leadership role in responding to the situation in Darfur, the humanitarian crisis resulting from the “ethnic cleansing” in Darfur is still ongoing.

Less than two weeks ago, the United Nations International Commission of Inquiry on Darfur issued its report, finding that “the Government of the Sudan and the Janjaweed [the government-supported militia] are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law.”<sup>1</sup> In particular, the Commission found that “Government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur,” which were conducted “on a widespread and systematic basis, and therefore may amount to crimes against humanity.”<sup>2</sup> The UN Commission “strongly recommends that the Security Council immediately refer the situation of Darfur to the International Criminal Court, pursuant to article 13(b) of the ICC Statute.”

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<sup>1</sup> The International Commission of Inquiry on Darfur was established by the United Nations Security Council on September 18, 2004, to investigate violations of international human rights and humanitarian law in Darfur, to determine whether acts of genocide had taken place and to identify the perpetrators of such violations to bring them to justice. The investigation took place from October 2004 to January 2005, and the Commission submitted its report to the High Commissioner for Human Rights on January 25. The report was released to members of the Security Council on January 31 and made public on February 1.

<sup>2</sup> The Commission of Inquiry also found that, while “[t]here is no doubt that some of the objective elements of genocide materialized in Darfur,” one crucial element, *i.e.*, genocidal intent “appears to be missing, at least as far as the central Government authorities are concerned,” since “generally speaking” the Sudanese policy of attacking, killing and forcibly displacing members of some tribes “does not evince a specific intent to annihilate, in whole or in part, a group distinguished on racial, ethnic, national or religious grounds.” Thus, the Commission concluded that “the Government of the Sudan has not pursued a policy of genocide,” but pointed out that, “in some instances” individuals, including Government officials, may have committed acts with genocidal intent, which is a matter to be determined by “a competent court ... on a case by case basis.” The Commission further emphasized that this conclusion “should not be taken as in any way detracting from, or belittling, the gravity of the crimes perpetrated in that region. ... [S]uch international offences as crimes against humanity or large scale war crimes may be no less serious and heinous than genocide ... [which] is exactly what happened in Darfur....”

The American Bar Association should urge the United States Government to take all necessary and proper steps to end the atrocities in Darfur, to provide international humanitarian assistance to the hundreds of thousands of refugees in eastern Chad, and to take steps to implement the Commission of Inquiry's recommendation with respect to referral to the International Criminal Court. The United States has commendably been outspoken in condemning the situation in Darfur during the past two years, but it must not stop now in pressing for further action.

In September 2004, the U.S. Department of State published a report documenting "a consistent and widespread pattern of atrocities committed against non-Arab villagers in the Darfur region of western Sudan." Members of the American Bar Association helped play an important role in this effort to interview victims and witnesses and document the situation in Darfur.<sup>3</sup> Based on that evidence and other information widely known throughout the international community, then-Secretary of State Powell concluded that "genocide has been committed in Darfur and that the Government of Sudan and the Jingaweit bear responsibility -- and that genocide may still be occurring." (Testimony before the Senate Foreign Relations Committee, September 9, 2004)

On July 22, 2004, even before Secretary Powell announced his conclusion that "genocide" is being perpetrated against the African inhabitants of Darfur, the United States Senate and House of Representatives unanimously passed Concurrent Resolution 133, demanding that the United Nations "assert leadership by calling the atrocities being committed in Darfur by their rightful name: 'genocide'," and urging the Administration "to continue to lead an international effort to stop genocide in Darfur, Sudan."

Earlier, in May of last year, Human Rights Watch published a report (cited in President Archer's May 20th letter) summarizing the results of its own extensive on-the-ground investigation as follows:

The government of Sudan is responsible for "ethnic cleansing" and crimes against humanity in Darfur, one of the world's poorest and most inaccessible regions, on Sudan's western border with Chad. The Sudanese government and the Arab "Janjaweed" militias it arms and supports have committed numerous attacks on the civilian populations of the African Fur, Masalit and Zaghawa ethnic groups. Government forces oversaw and directly participated in massacres, summary executions of civilians-including women and children—burnings of towns and villages, and the forcible depopulation of wide swathes of land long inhabited by

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<sup>3</sup> As explained in the Department of State report, an Atrocities Documentation Team, assembled at the initiative of the Department's Bureau of Democracy, Human Rights and Labor (DRL), conducted interviews in Chad in July and August. The team was primarily composed of independent experts recruited by the Coalition for International Justice (CIJ), and also included experts from the American Bar Association (ABA), DRL, and the State Department's Bureau of Intelligence and Research (INR) as well as the U.S. Agency for International Development (USAID).

the Fur, Masalit and Zaghawa. The Janjaweed militias, Muslim like the African groups they attack, have destroyed mosques, killed Muslim religious leaders, and desecrated Qorans belonging to their enemies. The government and its Janjaweed allies have killed thousands of Fur, Masalit, and Zaghawa-- often in cold blood, raped women, and destroyed villages, food stocks and other supplies essential to the civilian population. They have driven more than one million civilians, mostly farmers, into camps and settlements in Darfur where they live on the very edge of survival, hostage to Janjaweed abuses. More than 110,000 others have fled to neighbouring Chad but the vast majority of war victims remain trapped in Darfur.

Human Rights Watch Report: DARFUR DESTROYED: Ethnic Cleansing by Government and Militia Forces in Western Sudan (May 2004).

In the same vein, BBC News reported six months later: “Darfur attacks fuel genocide fear . . . The BBC’s Panorama programme has revealed new evidence of mass ethnic killings and rape in Darfur, adding to fears of genocide in the region.” (Hilary Anderson, BBC Africa Correspondent, BBC News, World Edition, Nov. 15, 2004.)

Consistent with the ABA’s policy of condemning genocide and other serious violations of international humanitarian law, its support for the International Criminal Court, and its goal of advancing “the rule of law in the world” (Goal VIII), the ABA should now call upon our government to take all necessary and proper steps within its power to end this ongoing genocide and avert the death of hundreds of thousands of potential African victims.

Ten years ago in Rwanda, the United States and the rest of the civilized world stood by watching and waiting while an estimated 800,000 Rwandans were slaughtered from April through July 1994 in a horrifying act of genocide. Never again should our country – or our Association – fail to speak out when genocide impends.

Respectfully submitted,

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