

Darfur, Genocide, the Security Council and the International Criminal Court

Basic background for advocacy

I. Commission of Inquiry

The Secretary General established the Commission of Inquiry (COI) as the Security Council requested by resolution in September 2004. Its function was to “investigate reports of violations of human rights and international humanitarian law in Darfur”. A key question was to determine whether acts of genocide had occurred and to identify those responsible for the acts. The Commission reported to the Security Council on January 25th, 2005.

II. Genocide

The Commission found that the Government of Sudan had not pursued a policy of genocide but that its officials and others in Sudan had committed grave atrocities, namely crimes against humanity and war crimes. The decision of the COI not to classify the atrocities in Darfur as genocide has led to a good deal of confusion. In the media and in politics facts were twisted to let it appear as if the Commission did not recognize the atrocities as crimes at all.

The COI concluded that there was not enough evidence to establish genocidal intent, which is a key element in the definition of the crime of genocide, behind the acts of the Sudanese Government. Nonetheless the COI did find that Government officials and militia had committed other gross atrocity crimes. The Commission declared that these heinous crimes may well be just as grave as genocide. These are crimes recognized by international law and the International Criminal Court (ICC) can try them. These crimes against humanity in the Darfur region are murder and persecution. The report states that the Sudanese Government’s main goal was to relocate the uprooted black African tribes of the Darfur region in camps where they could be kept under the government’s control.

So the criticism that the Commission did not find the Government of Sudan or the militia (Janjaweed) responsible for any crimes is not true. It just does not define them as genocide but rather as crimes against humanity and war crimes on a large scale. A court might well give the same sentence for such crimes as it would for genocide.

III. What could happen at the ICC

The prosecutor at the ICC is free to charge individuals or even those responsible in the Government of Sudan with genocide if he sees enough evidence for this intent. Therefore the ICC might still try some individuals, including Government officials, for genocide. The Commission’s conclusions do not represent a final decision nor do they represent the opinion of the whole UN. The report represents the opinion of the individuals on the Commission.

IV. Referral

Following the Commission’s recommendation, the UN Security Council referred the Darfur situation to the ICC. The US abstained from the resolution, thus making its adoption possible. As Sudan is not a party to the ICC and would not consent to the Court’s jurisdiction, this was the only way for the ICC to investigate the situation in Darfur. The US abstention on the referral makes its present policy of hostility toward the Court unsustainable. This might well lead to some degree of US cooperation with the ICC on Darfur. On June 6, 2005 the ICC Prosecutor formally opened an investigation into the Darfur situation.

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