

THE INTERNATIONAL CRIMINAL COURT: DARFUR AND BEYOND

By Heather Alexander, AMICC San Francisco

The American NGO Coalition for the International Criminal Court (AMICC) San Francisco, the San Francisco Bay Area Darfur Coalition and the American Friends Service Committee held a conference on the International Criminal Court and Darfur on March 8th in San Francisco. The event was cosponsored by the Buddhist Peace Fellowship, the Center for Justice and Accountability, United for Peace and Justice, and the Golden Gate University Law School International Law Society. This was the first event held by the new AMICC alliance forming in San Francisco.

Speakers included Santa Clara Law School Professor Beth van Schaack, formerly with the Office of the Prosecution of the International Criminal Tribunals for Former Yugoslavia and Rwanda, and former acting Executive Director of the Center for Justice and Accountability; Hastings College of the Law Professor Naomi Roht-Arriaza, former European Community Fulbright Scholar and researcher at the United States Institute of Peace and the MacArthur Foundation; and Sean Butler, international business transactions attorney, President and Co-chair of the International Criminal Court Alliance in Los Angeles and chair of the International Law Section of the Los Angeles County Bar Association.

Sean Butler began the presentation by discussing current events in Darfur, including the number of people killed and the role of the Sudanese government. He then spoke about the United States government's position on the ICC, explaining that the US government signed the Rome Statute during the Clinton administration, but nullified the signature during the second Bush administration. He went on to highlight the disconnect between the government position on the ICC and Darfur, which was called a genocide by then Secretary of State Colin Powell. The United States abstained from vetoing a Security Council referral of the Darfur situation to the ICC. This significant shift of US government policy may mark a new era of US – ICC relations. Mr. Butler wrapped up his presentation with a call to action, stressing the need for US government involvement in the ICC.

Professor Beth van Schaack spoke about the structure and functions of the ICC, beginning with the history of international criminal law, including the International Criminal Tribunals for Rwanda and the former Yugoslavia. She explained the ongoing ICC investigations in northern Uganda, where the government of Uganda referred itself to the ICC in the hopes of halting the abuses of the Lord's Resistance Army. She also discussed the self-referral of the Democratic Republic of Congo, mentioning that no case has yet been brought by one state against another. Rather, states are requesting ICC involvement for their own internal conflicts. She then discussed the unique situation in Darfur, where the government of Sudan has not ratified the Rome Statute and does not support an ICC investigation. The UN Security Council exercised its power to force an ICC referral of Darfur. This forced referral will be a true test of the ICC's effectiveness in a country where the government is opposed to ICC investigations.

Professor Naomi Roht-Arriaza discussed the important role international criminal prosecution plays in fostering legitimate national criminal investigations in states like Sudan. She explained

how the ICC has forced the Sudanese government to set up a national system of courts to investigate Darfur crimes, as well as how continuing involvement by the ICC Prosecutor has forced greater transparency and accountability in these Sudanese courts. She also discussed the concept of complementarity, whereby national court systems, traditional justice mechanisms and truth and reconciliation commissions may be used in conjunction with ICC prosecutions, to allow amnesty and truth telling by lower level perpetrators while insuring prosecution of high level organizers and government actors. Finally, she mentioned the difficulty of prosecuting high level officials due to head of state immunity and diplomatic immunity, and the current trend in international law to hold such persons accountable through increased national jurisdiction, such as that used in the Pinochet trial, and international mechanisms, such as the ICC.