



# The Association of the Bar of the City of New York

Office of the President

**PRESIDENT**

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February 23, 2005

The Honorable Condoleezza Rice  
Secretary of State  
2201 C Street, NW  
Washington, D.C. 20520

Dear Secretary Rice:

I write on behalf of the Association of the Bar of the City of New York to urge the Department of State to recommend that the United States representative to the United Nations Security Council vote in favor of referring the situation in Darfur to the International Criminal Court, in keeping with the recommendation of the U.N. International Commission of Inquiry in its report of January 25, 2005.

The Association is an independent non-governmental organization of more than 22,000 lawyers, judges, law professors and governmental officials in 50 countries throughout the world. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, which investigates and reports on human rights conditions around the world. The Association also follows political and legal issues affecting Africa through its Committee on African Affairs.

The Association commends the White House, Department of State and the United States Congress for demonstrating international leadership in their commitment to peace in Sudan, particularly in their efforts to stop the slaughter of civilians in Darfur. Former Secretary of State Colin Powell's visit to Darfur last summer, and his conclusion that genocide has occurred in Darfur gave hope to the people in that afflicted region. As you know, in Concurrent Resolution 133, the Senate and House of Representatives also declared the atrocities unfolding in Darfur to be genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (1948).

American leadership in the Security Council resulted in Resolution 1564, which created the U.N. Commission of Inquiry to investigate violations of international humanitarian law and human rights law in Darfur, including whether acts of genocide occurred there. The Security Council also tasked the Commission with identifying the perpetrators of such crimes to ensure that those responsible are held accountable. In its report, the Commission established that the government of Sudan and the *janjaweed* militias are responsible for widespread and systematic violations of international law that may amount to crimes against humanity, including indiscriminate attacks, killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement. The

Commission strongly recommended that the Security Council immediately refer the situation of Darfur to the ICC, pursuant to article 13(b) of the ICC Statute.

We now ask that the United States work to guarantee that war criminals in Darfur are brought to justice by voting for the Security Council to refer the situation in Darfur to the ICC. Such a vote would help to protect the citizens of Sudan and promote American interests abroad without undermining U.S. principles regarding the ICC.

In the American Service-Members' Protection Act (ASPA), Congress affirmed that nothing in the law shall prohibit the U.S. from "rendering assistance to international efforts to bring to justice ... foreign nationals accused of genocide, war crimes or crimes against humanity" (Section 2015). Furthermore, ASPA authorizes the President to make an exception to the general limits on cooperation with the ICC. Under Section 2011, these limits "shall not apply to any action or actions with respect to a specific matter involving the International Criminal Court taken or directed by the President on a case-by-case basis in the exercise of the President's authority as Commander in Chief of the Armed Forces of the United States...or in the exercise of the executive power."

The unfolding tragedy in Darfur clearly triggers the application of section 2015 of ASPA. It also warrants the exercise of presidential authority pursuant to section 2011. In addition to providing relief for the people of Darfur, bringing these perpetrators to justice would promote the national interest of the United States. Darfur is destabilizing Sudan as it struggles to secure a peace brokered by the United States. Prosecuting the individuals responsible for this instability will facilitate the work of American diplomats and development experts in Sudan. Sudan is also known to have been a state sponsor of terrorism, which flourishes in places like Darfur, where an atmosphere of impunity and violence prevails. Finally, there are no American service members or other individuals covered by ASPA present in Sudan who would be affected by the ICC referral.

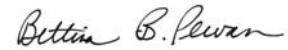
The urgency of the situation in Darfur militates against the creation of a special *ad hoc* criminal tribunal, such as the U.N. International Criminal Tribunals for the former Yugoslavia and Rwanda, to prosecute the crimes currently being committed in Darfur. As the Commission of Inquiry stated in its report, these tribunals, while meritorious, are simply too slow and too expensive to respond quickly to the international crimes underway in Darfur. The Commission also advised against expanding the mandate of the existing *ad hoc* tribunals to cover crimes in Darfur. The expansion would consume excess time and financial resources, requiring a decision of the Security Council, the election of new judges and new prosecutors and the hiring of more staff. In addition to these drawbacks, expansion would confuse the priorities and mandates of the Tribunals. The Commission found that creating a domestic-international "special court" for Darfur, such as the Special Court for Sierra Leone, would also be unwise. Given the on-going involvement of the government of Sudan in the crimes committed in Darfur, there is very little reason to hope for its meaningful cooperation.

The ICC would be the most effective and appropriate forum to prosecute crimes committed in Darfur. The ICC is already up and running, and was designed to address precisely this type of situation. It has a mandate to prosecute genocide, war crimes and crimes against humanity only when national courts are unable or unwilling to do so. The Sudanese government has demonstrated its inability and unwillingness to hold perpetrators accountable, and the ICC offers the best way to break the cycle of impunity that is allowing the bloodshed to continue.

The world looks to the United States for leadership in resolving the tragic conflicts that have wracked Sudan for decades. America has led the international community in its condemnation of atrocities in Darfur. Former Secretary Powell and Congress have found that

genocide has occurred. In pressing for Resolution 1564, our government committed itself to ensuring those responsible are held accountable. The ASPA provides for support to the ICC to address situations like Darfur. In our opinion as legal practitioners, international law and domestic law support a U.S. vote on the Security Council to refer of the situation in Darfur to the ICC.

Sincerely,

A handwritten signature in cursive script that reads "Bettina B. Plevan".

Bettina B. Plevan  
President