



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

Office of the President

**PRESIDENT**

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Commissioners  
International Commission of Inquiry on Darfur  
c/o Ms. Catherine Gerth  
United Nations Office at Geneva  
Palais des Nations Room A847  
CH-1211 Geneva 10

*Via fax: + 41 22 917 02 60 &  
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December 28, 2004

Dear Commissioners,

I write on behalf of the Association of the Bar of the City of New York to urge the International Commission of Inquiry to recommend that the Security Council refer the situation in Darfur to the International Criminal Court (ICC) when it reports back to the Secretary-General on or before January 25, 2004.

The Association is an independent non-governmental organization of more than 22,000 lawyers, judges, law professors and government 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 is deeply concerned about serious violations of international human rights and humanitarian law that have been and continue to be committed in Darfur. We believe that the International Commission of Inquiry, established pursuant to operative paragraph 12 of Security Council Resolution 1564 (2004), is uniquely positioned to make a difference in helping to stop the violence against civilians.

Human rights groups, including Amnesty International and Human Rights Watch, have extensively documented horrific attacks on civilians by the Sudanese government working with the "Janjaweed" militias in Darfur. According to their fact finding, war crimes and crimes against humanity, including ethnic cleansing, have been committed. Civilians have been subjected to widespread killings, rape, burning of villages, forcible displacement, and looting.

These groups have also documented the Sudanese government's failure to take meaningful steps to prosecute the perpetrators. According to Human Rights Watch, the Sudanese government has sought to create "the impression of prosecution" while letting impunity reign. Khartoum has set up committees to investigate crimes, but they have failed to complete their work and failed to follow up on their findings. Amnesty International has also documented widespread denial of access to justice for victims of human rights violations in Darfur.

We believe that international prosecutions are necessary to help deter the commission of crimes against civilians. While prosecutions conducted by national justice systems are preferable where possible, the international community must not allow impunity to prevail when national courts cannot or will not hold perpetrators of serious crimes to account.

As Justice Richard Goldstone recently argued in a presentation to the Association's Committee on International Human Rights, the ICC would be the most appropriate forum for international prosecutions for crimes committed in Darfur. The ICC was designed to address precisely this type of situation. It has a mandate to prosecute genocide, war crimes, and crimes against humanity when national courts are unable or unwilling to do so. (See Rome Statute, Arts. 1, 5, 17.) The Sudanese government's track record to date provides ample evidence that international prosecutions are necessary in this case, and that there is no basis for an objection on the basis of complementarity. (See Rome Statute, Art. 17.) Most importantly, the ICC is a standing institution. It is ready to act promptly to investigate crimes in Darfur, which could send a strong signal to the perpetrators that the international community is serious about accountability.

Pursuant to Article 13(b) of the Rome Statute, the Security Council is empowered to refer situations to the ICC. As Sudan is not a party to the ICC, the court can only assume jurisdiction if either the Sudanese government declares that it accepts the jurisdiction of the court (Rome Statute, Art. 12(3)), which given the circumstances is not a realistic possibility, or the Security Council makes a referral of the situation (Rome Statute, Art. 13(b)). Accordingly, we firmly believe that a Security Council referral is imperative to ensure that justice is done.

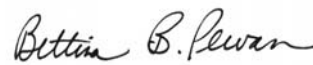
A proposal for the Security Council to refer the situation in Darfur to the ICC may face significant opposition given the United States' refusal to support the ICC and the fact that two other Permanent Members of the Security Council - namely, Russia and China - have significant economic interests in Sudan. However, all appropriate pressures, including the good offices of the Secretary-General, must be brought to bear to convince these governments that the cost of the Security Council failing to act to ensure accountability for crimes committed in Darfur is too high to be accepted.

Where massive atrocities continue to be perpetrated against civilians by a government working with militias, the international community must act, and where powerful nations hesitate to act on the basis of narrow national interests, they must be held to account in the court of world public opinion. At the very least, putting the issue of an ICC referral squarely on the table would compel Council members to justify a failure to act in the face of heinous crimes. Notably, the Bush administration announced its conclusion that atrocities committed in Darfur constitute genocide on September 9, 2004 and the United States Congress declared the situation in Darfur genocide on July 22, 2004. (Statement by the President on Violence in Darfur, Sudan, White House Press Release, September 9, 2004; House Concurrent Resolution 467, Senate Concurrent Resolution 133, July 22, 2004.) The United States, as a party to the Convention on the Prevention and Punishment of the Crime of Genocide, must undertake to prevent genocide.

The International Commission of Inquiry must play a crucial role in mobilizing the Council to take appropriate action. The recommendations of previous similar commissions of inquiry for Rwanda and the former Yugoslavia helped lead to the creation of International Criminal Tribunal for Rwanda (Security Council Resolution 955 (1994)) and the International Criminal Tribunal for the Former Yugoslavia (Resolution 808 (1993)).

A strong recommendation that the Security Council should refer the situation in Darfur to the International Criminal Court could go a long way in helping to assure that justice is done. We urge you to give our view serious consideration and when you report back to the Secretary-General in January 2005, recommend an ICC referral of the situation in Darfur.

Very truly yours,

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

Bettina B. Plevan  
President

cc: Justice Richard Goldstone  
Henry Shattuck Visiting Professor of Law, Harvard University