

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

August 7-8, 2006

RECOMMENDATION

RESOLVED, That the American Bar Association urges the United States Government to support the Darfur peace accord signed on May 5, 2006; and to support the work of the International Criminal Court in investigating and prosecuting the individuals responsible for crimes in Darfur, Sudan, the humanitarian work of the United Nations in Darfur, Sudan, the peacekeeping efforts of the African Union, and any eventual peacekeeping efforts of the United Nations in Darfur, Sudan.

FURTHER RESOLVED, That the American Bar Association urges the United States Congress to enact and the President of the United States to sign into law legislation which would:

- (1) block assets and restrict visas of any individual the President of the United States determines is complicit in, or responsible for, acts of genocide, war crimes, or crimes against humanity in Darfur, including the family members or any associates of such individual to whom assets or property of such individual was transferred on or after July 1, 2002;
- (2) authorize the President of the United States to provide assistance to support the African Union Mission in Sudan;
- (3) encourage the Secretary of State to designate the Janjaweed militia as a foreign terrorist organization under section 219 of the Immigration and Nationality Act; and
- (4) encourage the President of the United States to appoint a Presidential Envoy for Sudan to steward efforts to implement the Comprehensive Peace Agreement for Sudan, bring stability and peace to the Darfur region, address instability elsewhere in Sudan and northern Uganda, and pursue a truly comprehensive peace throughout the region.

FURTHER RESOLVED, That the American Bar Association urges the President of the United States to take action to implement such legislation immediately upon its enactment into law.

REPORT¹

On February 14, 2005, the ABA House of Delegates adopted Resolution 106, calling 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.”

About one month later, ABA President Robert J. Grey wrote on behalf of the ABA to the President of the United States, urging the United States Government to support, or at least refrain from opposing, a resolution by the U.N. Security Council referring the situation in Darfur to the International Criminal Court (ICC).²

On March 31, 2005, the Security Council adopted resolution 1593, “refer[ing] the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court,” and “invi[t] the Prosecutor to address the Council within three months of the date of adoption of this resolution and every six months thereafter on actions taken pursuant to [the] resolution.”³ The United States Government abstained from voting.

Since the referral, the ICC’s Office of the Prosecutor (OTP) has begun the process of investigating the matter and bringing to justice those responsible for crimes in connection with the Darfur crisis. On June 1, 2005, the Prosecutor opened a formal investigation.⁴ In its first report to the Security Council on June 29, 2005, the Office of the Prosecutor acknowledged that there was

a significant amount of credible information disclosing the commission of grave crimes within the jurisdiction of the Court having taken place in Darfur. These crimes include the killing of thousands of civilians and the widespread destruction and looting of villages, leading to the displacement of approximately 1.9 million civilians. The conditions of life resulting from this violence have led to the deaths of tens of thousands from disease and starvation, particularly affecting vulnerable groups such as children, the sick and the elderly. Information also suggests a pervasive pattern of rape and sexual violence taking place throughout Darfur, including allegations of gang rape, as well as attacks on children and young girls.⁵

¹ This report is current as of its submission to the ABA House of Delegates on May 10, 2006. It may have been subsequently modified to take account of changed circumstances.

² Letter from Robert J. Grey, President of the ABA, to the President of the United States (Mar. 16, 2005).

³ UNSCR 1593 (2005).

⁴ Letter from Luis Moreno Ocampo, Prosecutor of the International Criminal Court, to Judge Claude Jorde, Presiding Judge, Pre Trial Chamber 1 (June 1, 2005).

⁵ Report of the Prosecutor of the International Criminal Court, Mr. Luis Moreno Ocampo, to the Security Council Pursuant to UNSCR 1593 (2005) (June 29, 2005).

The Office of the Prosecutor gave a second report on December 13, 2005, indicating that it had organized a core team of twenty-six individuals representing nineteen nationalities, had identified witnesses in seventeen countries, had screened over 100 potential witnesses, and had taken a number of formal statements. The team had also registered and analyzed more than 2,500 items of physical evidence collected by the International Commission of Inquiry for Darfur.⁶

The United States has taken some steps to address the Darfur crisis. In September 2004, then-Secretary of State Colin Powell declared that genocide had been committed in Darfur by the government-backed militias. Almost one year later, in July 2005, current Secretary of State Condoleezza Rice visited Darfur to meet with Sudanese officials, African Union representatives, NGO workers, and internally displaced persons. The United States contributed \$132 million to the U.N. Mission in the Sudan in the 2005 fiscal year, and another \$113 million through February of the 2006 fiscal year.⁷ And on April 27, 2006, President Bush issued an executive order freezing the assets of anyone deemed to have posed a threat to the peace process or stability in Darfur.⁸

A peace agreement between the Government of the Sudan and the largest and most powerful rebel group, a faction of the Sudan Liberation Army (SLA), reached a peace agreement on May 5, 2006, but how it will affect the situation on the ground remains to be seen. It is of particular concern that the two other rebel groups, including an SLA splinter faction, have refused to sign the accord.

Meanwhile, since the February 2005 ABA resolution, the situation on the ground has deteriorated significantly. Both the OTP and Human Rights Watch have documented an escalation in violence against civilians, humanitarian workers, and African Union peacekeepers in late 2005. The violence has also reached across Sudan's western border into eastern Chad.⁹

There are substantial obstacles to progress in the area. The United Nations High Commissioner for Refugees has decided to reduce its 2006 budget for work in Darfur by 44%, "[i]n view of the limited access to some areas and a reduced number of field staff."¹⁰ In

⁶ Second Report of the Prosecutor of the International Criminal Court, Mr. Luis Moreno Ocampo, to the Security Council Pursuant to UNSCR 1593 (2005) (Dec. 13, 2005).

⁷ Darfur and Sudan: The Hard Work of Peace, U.S. Department of State (Feb. 27, 2006), available at <http://www.state.gov/r/pa/scp/2006/62192.htm> (last visited Mar. 24, 2006).

⁸ Executive Order: Blocking Property of Persons in Connection with the Conflict in Sudan's Darfur Region, available at <http://www.whitehouse.gov/news/releases/2006/04/20060427.html> (last visited May 1, 2006).

⁹ *Id.*; DARFUR BLEEDS: RECENT CROSS-BORDER VIOLENCE IN CHAD, HUMAN RIGHTS WATCH (Feb. 2006); SUDAN: IMPERATIVES FOR IMMEDIATE CHANGE, HUMAN RIGHTS WATCH (Jan. 2006).

¹⁰ CNN.com, U.N. to Halve Darfur Refugee Aid, Mar. 9, 2006, <http://edition.cnn.com/2006/WORLD/africa/03/09/darfur.reut/> (last visited Mar. 24, 2006).

neighboring eastern Chad, to which many Darfur refugees have fled, violence has forced most local and international NGOs to suspend their activities.¹¹ In October 2005, five African Union peacekeepers and two civilian drivers belonging to a peacekeeper contractor were killed. Although the number of government-backed militia attacks against villages has declined, according to Human Rights Watch, “this is largely because most of the targeted population has already been displaced from the most fertile, desirable rural areas.”¹²

Thus, despite the efforts of the ICC, the United Nations, the African Union, and other international and non-governmental organizations, the situation in Darfur has worsened:

As of December 2005, more than half of Darfur’s six million people—Arabs and non-Arabs, pastoralists and farmers—now suffer the effects of a collapsed economy, little or no freedom of movement, and the loss of livelihoods from looted and destroyed property. More than two million displaced victims of “ethnic cleansing” in Darfur remain confined in camps, some for more than two years, where they are almost entirely dependent on foreign assistance and remain vulnerable to violence. Most displaced persons are unable to return to their rural homes due to the insecurity created by government forces and Janjaweed. Where individuals have attempted to return, they face continuing harassment and deadly attacks from growing numbers of armed groups, including the rebel movements, in some cases at the hands of the same persons who forcibly displaced them.¹³

It is clear that, despite the involvement of the ICC in investigating the atrocities in Darfur, the violence and murder will continue unless the international community can establish a meaningful presence on the ground. An African Union peacekeeping mission of approximately 7,700 soldiers and civilian police officers has been present in Darfur since 2004, under a mandate to monitor the situation and protect civilians under imminent threat. However, the effectiveness of this task force has been constrained by a lack of resources and manpower. At present, the African Union is considering transferring its mandate to the United Nations, but resistance from Sudan has delayed any decision.¹⁴

Moreover, since the ABA passed Resolution 106, the United States has yet to pass two major pieces of legislation proposing, among other measures, sanctions against perpetrators of crimes against humanity and genocide in Darfur. The Darfur Peace and Accountability Act of 2005 (S. 1462) was passed by the Senate in November 2005. The House of Representatives passed a similar bill, the Darfur Peace and Accountability Act of 2006 (H.R. 3127) in April

¹¹ DARFUR BLEEDS: RECENT CROSS-BORDER VIOLENCE IN CHAD, HUMAN RIGHTS WATCH (Feb. 2006).

¹² ENTRENCHING IMPUNITY GOVERNMENT RESPONSIBILITY FOR INTERNATIONAL CRIMES IN DARFUR, HUMAN RIGHTS WATCH (Dec. 2005).

¹³ *Id.*

¹⁴ Les Neuhaus, *African Union Extends Mission in Darfur*, THE GUARDIAN, Mar. 10, 2006, available at <http://www.guardian.co.uk/world/latest/story/0,-5676917,00.html> (last visited Mar. 24, 2006).

2006, but it is still awaiting action by the Senate. The House of Representatives bill has been referred to the Senate for a committee recommendation.

The need for immediate action to halt the crimes being committed in Darfur has never been more urgent. Thousands of civilians have already perished. Thousands more will die if something is not done now. Therefore, consistent with our policy of condemning genocide and other serious violations of international humanitarian law, in support of the International Criminal Court, and its goal of advancing “the rule of law in the world” (ABA 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 deaths of hundreds of thousands of African civilians.

Respectfully submitted,

Brad Brian, Chair
Section of Litigation
August 2006

GENERAL INFORMATION FORM

Submitting Entity: Section of Litigation

Submitted by: Brad Brian, Chair

1. Summary of Recommendation.

The recommendation proposes that the ABA resolve to call upon the United States Government to take all necessary and proper actions to end the ongoing atrocities in the Darfur region of the Sudan, to provide humanitarian assistance to the refugees in eastern Chad, to support the May 2005 peace accord, to support the efforts of the International Criminal Court, the United Nations, and the African Union toward the same goals, and to pass into law and implement the Darfur Peace and Accountability Act of 2006.

2. Approval by Submitting Entity.

On May 2, 2006, the Section of Litigation Council unanimously approved this Recommendation.

3. Has this or a similar recommendation been submitted to the House or Board previously?

Yes

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

At its February 14, 2005 Midyear Meeting in Salt Lake City, Utah, the ABA House of Delegates passed Resolution 106, proposed by Robert L. Weinberg, the District of Columbia Bar Delegate, which called 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.”

At the time of its adoption, Resolution 106 broadly addressed the crisis in Darfur and highlighted the need for the United States to take action to end the conflict. Since that time, however, the situation in Darfur has changed so significantly that a new resolution is appropriate. The U.N. Security Council referred the situation to the International Criminal Court for investigation and prosecution of individuals responsible for crimes under its jurisdiction, the United States has taken a more aggressive stance in opposing the ongoing atrocities, and the United Nations is considering a peacekeeping role in the region. The proposed resolution acknowledges these developments and calls upon the United States to take further action consistent with the new geopolitical situation.

Moreover, since Resolution 106 was adopted, the United States Congress has proposed, but has so far failed to pass or implement, major legislation aimed at supporting efforts to end the Darfur

conflict and punishing those responsible for atrocities. The proposed resolution specifically urges Congress to pass the most significant legislation regarding Darfur, the Darfur Peace and Accountability Act of 2006.

5. What urgency exists which requires action at this meeting of the House?

As noted in the report and recommendation, the genocide and crimes against humanity continue in Darfur, claiming lives and displacing and injuring more civilians with each passing day. Urgent action is absolutely required.

6. Status of Legislation. (If applicable).

The recommendation urges the passage of the Darfur Peace and Accountability Act of 2006, H.R. 3127. The House of Representatives passed this bill in April 2006, but it is still awaiting action by the Senate.

7. Cost to the Association. (Both direct and indirect costs.)

Adoption of the recommendation will not result in expenditures.

8. Disclosure of Interest. (If applicable.)

No known conflict of interest exists.

9. Referrals.

This Recommendation is being circulated to Association entities and Affiliated Organizations including:

International Law Section. The Recommendation was referred during the week of May 1-5, 2006. During a conference call on May 5, members of the International Law Section stated that the Section would consider formally approving the resolution.

Criminal Justice Section. The Recommendation was referred on May 5, 2006. At the time of submission of this Form, we have not received a formal response.

All Sections and Divisions

10. Contact Person. (Prior to the meeting.)

JoAnne A. Epps
Professor of Law and Associate Dean for Academic Affairs
Temple University Beasley School of Law
1719 N. Broad Street
Philadelphia, PA 19122-6094
Phone: 215/204-8993

Fax: 215/204-2008
Email: joanne.epps@temple.edu

Jerome Roth
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105
Phone: 415/512-4010
Fax: 415/512-4077
Email: Jerome.Roth@mto.com

11. Contact Person. (Who will present the report to the House.)

JoAnne A. Epps
Professor of Law and Associate Dean for Academic Affairs
Temple University Beasley School of Law
1719 N. Broad Street
Philadelphia, PA 19122-6094
Phone: 215/204-8993
FAX: 215/204-2008
Email: joanne.epps@temple.edu