

Robert J. Grey, Jr.
President

AMERICAN BAR ASSOCIATION

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The President
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

Last May, my predecessor, then-American Bar Association President Dennis Archer, contacted you regarding the urgent need to address the worsening international humanitarian crisis in Darfur, Sudan. Nearly a year later, the situation remains critical, with thousands of people enduring systemic human rights abuse -- including rape, torture, murder, and forced displacement -- largely perpetrated by the Sudanese government and the Janjaweed militia. On behalf of the Association, I urge you to take all necessary and proper actions to end the ongoing atrocities (including genocide, crimes against humanity, and war crimes) in Darfur; to provide 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 these crimes.

We recognize and appreciate the tremendous leadership the United States has demonstrated on this issue in the past two years -- including by denouncing the atrocities as genocide, providing humanitarian assistance, supporting implementation of the peace agreement, and supporting the creation of an independent U.N. Commission of Inquiry to investigate reports of violations of international humanitarian and human rights laws in Darfur. The U.S. has also called for accountability for those who are responsible for orchestrating and carrying out these crimes. The Commission's recently released report stated that, in order to end the violence and establish peace, it is essential that the perpetrators of such acts be brought to justice before a competent and credible international criminal court. The Commission further specifically recommends that Darfur be referred to the International Criminal Court (ICC). We concur with the Commission and urge you to support such a referral or, at a minimum, ensure that the United States does not stand in the way of a referral.

As the Commission's report notes, the ICC is the most suitable forum for trying those responsible for atrocities in Darfur. The Sudanese government clearly is unable or unwilling to undertake national prosecutions and has not responded to repeated Security Council resolutions calling for justice. Indeed, as the Commission's report noted, some officials of the Sudanese government may be subject to trial on charges of genocide and

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crimes against humanity. The process of creating a new tribunal or expanding the mission of an existing tribunal such as the International Criminal Tribunal for Rwanda would be time-consuming and costly. In the meantime, thousands of people continue to suffer in Darfur and evidence that may be used to convict those responsible is degraded or lost. The ICC has an existing permanent infrastructure and a professional corps of investigators, lawyers, judges and other staff experienced in the investigation and adjudication of crimes against humanity, war crimes and genocide. It was for just such a situation as Darfur that the court was created and should be utilized.

While the ABA strongly supports the ICC, and urges full U.S. participation, we recognize that your administration has expressed concerns regarding the court and understand that officials have stated their reluctance to "legitimize" the court by supporting a referral of Darfur. However, concerns regarding jurisdiction over U.S. nationals are not applicable in this case and the U.S. can enable a referral without making an affirmative statement on support for the ICC. The Security Council resolution could restrict the ICC's mandate strictly to investigation and prosecution of Sudanese citizens (thus excluding any Americans), ICC crimes on Sudanese territory, and a time period that covers Darfur atrocities. The resolution also could recommend only voluntary funding from U.N. member states to assist the ICC to undertake the Security Council referral.

We would hope that if a Security Council resolution referring Darfur to the ICC goes forward, and the U.S. decides not to support the referral, that it abstain from the vote and refrain from exercising a veto. A majority of Security Council members are parties to the ICC and support a referral. We urge the U.S. not to depart from its longstanding commitment to international human rights and humanitarian law by blocking this action that will help provide justice for the victims of atrocities in Darfur.

The grievous toll this conflict has taken and continues to take on the people of Darfur and throughout Sudan, as well as its impact on regional and international security, merits immediate action on the part of the Security Council to avert further acts of genocide, crimes against humanity and war crimes. We hope that the U.S. will support, or at least acquiesce to, a referral to the ICC and provide any evidence, information or assistance necessary to see justice served in Darfur. As an organization committed to promoting the international rule of law and with the resource of thousands of lawyers and judges, we stand ready to assist in this effort.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Grey, Jr.", written in a cursive style.

Robert J. Grey, Jr.