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"The ICC's Blunder on Sudan" by Nesrine Malik*

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March Roundtable: ICC and Darfur Introduction

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March Roundtable: ICC and Darfur Introduction

Abstract

An annotation of:

"The ICC's Blunder on Sudan" by Nesrine Malik. The Guardian. February 4, 2010.

Keywords

Human rights, Darfur, International Criminal Court (ICC), Sudan, War crimes

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ICC and Darfur

Article under review: [“The ICC's Blunder on Sudan” by Nesrine Malik. *The Guardian*. February 4, 2010.](#)

The establishment of the ICC as a permanent international criminal court signifies one of the most important advancements in international law. Yet the recent ICC ruling concerning the arrest warrant for Omar al-Bashir for genocide charges and for his participation in a five-year campaign of violence in western Sudan's Darfur region brought the role and work of this court once again to the center of the international debate.

This month's centerpiece by Nesrine Malik, a Sudanese-born writer and commentator for *The Guardian*, argues that the ICC ruling undermines the ongoing peace process in Sudan and that the court's decision may play out in favor of the current government authorities in the middle of an electoral process. As she indicates, “ (...) despite my belief that Bashir may be guilty of crimes against humanity, not only in Darfur but in other parts of the country, I cannot help but think that the ICC has over-reached itself in this instance. The timing was again unfortunate, with the [first Sudanese elections](#) in 24 years due in April and the country holding on to a fragile peace in preparation for a referendum in 2011 when the south will vote on secession.”

She also questions the validity of the court charge of genocide, indicating that genocide is not “merely an escalated form of human rights abuse.” She clarifies her point as follows: “Could he and his junta be guilty of gratuitous crimes against humanity in order to consolidate power and dispatch challenges to authority? Yes. But an organized, deliberate and concerted effort at ethnic cleansing diverts too much time and resources from a government much more concerned with the business of maintaining Khartoum as a fortress and securing strategic access to resources and oil-rich areas in the south.”

In addressing Malik's comments on the court's ruling and its impact, our panelists indicate that it is dangerous to downplay the level of massive atrocities committed in Darfur as “simple” human rights abuses. Bashir is accused of war crimes, crimes against humanity, and potentially genocide. The specific charges include widespread or systematic murder, extermination, rape, torture, and forcible transfer of large numbers of civilians. These are egregious atrocities, crimes that are understood to shock the conscience of humanity. Ultimately, the legal process in itself will clarify whether or not the intent of the Sudanese government was to target entire populations in Darfur, which would define the committed crimes as genocide.

The contributors agree on the serious legal and political challenges confronting this case, especially considering the fact that Bashir is the first sitting president to face an arrest order by the ICC and that the ruling takes place in the context of an internal conflict and humanitarian crisis in Sudan. However, the panelists underscore that these obstacles are integral and normal elements of the dynamic interaction between law and politics, and should not be used as an excuse to stop the search for universal justice. They support the idea that the future of the newly-formed ICC depends on its capacity to maintain independence from political considerations, and that the prospects for a peaceful solution to Sudan's problems are intrinsically linked to the

court's capacity to hold the perpetrators of massive human rights abuses accountable for their crimes.

These issues and others are considered in this month's Roundtable.