PART 2

Obligation to Arrest: The Darfur Issue
Introduction to Part 2

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The situation in Darfur, and the arrest warrant issued by the ICC Pre-Trial Chamber on July 12, 2010 against Sudanese President Omar Al Bashir for genocide, ignited much debate about the extent of obligations of States Parties to cooperate with the ICC in implementation of arrest warrants in light of the requirements of public international legal instruments, including the Rome Statute and the Genocide Convention, contrary pronouncements or resolutions of international organizations such as the African Union, and customary international law.

The following question was featured on www.ICCForum.com from January through May 2011:

What are the obligations of Contracting Parties to the Genocide Convention to implement arrest warrants for genocide issued by the ICC, and of African Union State Parties to implement ICC arrest warrants generally?

This debate addresses three key legal issues raised by the arrest warrant issued by the ICC Pre-Trial Chamber on 12 July 2010 against Sudanese President Omar Al Bashir for genocide. The Pre-Trial Chamber found that there are reasonable grounds to believe that President Al Bashir was responsible for three counts of genocide committed against the Fur, Masalit, and Zaghawa ethnic groups in Darfur: genocide by killing, genocide by causing serious bodily or mental harm, and genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group’s physical destruction.

The first set of issues relates to obligations arising from the Genocide Convention. In terms of Article I of the Genocide Convention, Contracting Parties undertake to prevent and punish genocide. Article VI provides that: “Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.” The argument has thus been made that in the absence of national proceedings by a competent tribunal in the territorial State, Contracting Parties to the Genocide Convention, including those not parties to the Rome Statute of the ICC