

NOTE

The ICC versus Sudan: How Does the Darfur Case Impact the Principle of Complementarity?

Erica J. Saxum*

Only four cases have come before the International Criminal Court since its inception in 2002. The first three cases were self-referrals by Uganda, Democratic Republic of Congo, and Central African Republic. Darfur is the first and only situation thus far to be referred to the Court by the UN Security Council. Examination of these four cases, particularly the Darfur situation, reveals how the ICC interprets the principles of complementarity and admissibility differently based on whether the case is self-referred or referred by the Security Council. Instead of establishing a clear framework for determining admissibility and complementarity, the Court's handling of the four ICC cases show that the Court either: (a) accepts almost any unwillingness or inability factors in order to take jurisdiction of a case, or (b) refuses to accept any ability or willingness factors in order to prevent losing jurisdiction over a case. Understandably, the ICC needs to hear cases in order to establish itself as a legitimate court. The Court should be extremely careful, however, to only take cases that clearly adhere to the jurisdictional elements laid forth in the Rome Statute. By doing so, the ICC can prove its credibility and solidify its place as the new global court.

I. INTRODUCTION

This paper discusses the Darfur situation currently before the International Criminal Court (hereinafter the “ICC” or the “Court”) and the issue of complementarity. Part II provides a background of the Rome Statute (hereinafter the “Statute”). Part III explores complementarity and admissibility, focusing specifically on what constitutes a State’s unwillingness or inability to genuinely investigate or prosecute a case, by reviewing the jurisdictional requirements of the ICC. Part IV reviews the cases that have come, or are currently, before the ICC. Part V examines the ICC’s application of the complementarity principle in the self-referred and Security Council-referred cases. Part VI focuses specifically on the Darfur situation and its admissibility of the case in the ICC, followed by Part VII, the conclusion.

II. THE ROME STATUTE AND THE ICC

The Rome Statute was the first multilateral legal document to detail the investigation and prosecution of international crimes.¹ Initially signed by 120 states in 1998 and entered into force on July 1, 2002,² the Statute established the International Criminal Court³ to ensure that the most serious of international crimes do

* Erica J. Saxum (JD, Boston University, expected 2010) received a BA in Political Science from the University of Southern California in 2006.

¹ Remigius Oraeki Chibueze, *The International Criminal Court: Bottlenecks to Individual Criminal Liability in the Rome Statute*, 12 ANN. SURV. INT’L & COMP. L. 185, 186 (Spring 2006).

² Ada Sheng, *Analyzing the International Criminal Court Complementarity Principle Through a Federal Court Lens*, 13 ILSA J. INT’L & COMP. L. 413 (Summer 2007).

³ *Id.*