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Reclaiming Fundamental Principles of Criminal Law in the Darfur Case

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Abstract

According to the authors, the Report of the UN Commission of Inquiry on Darfur and the Security Council referral of the situation in Darfur to the International Criminal Court (ICC) bring to light two serious deficiencies of the ICC Statute and, more generally, international criminal law: (i) the

systematic ambiguity between collective responsibility (i.e. the responsibility of the whole state) and criminal liability of individuals, on which current international criminal law is grounded, and (ii) the failure of the ICC Statute fully to comply with the principle of legality. The first deficiency is illustrated by highlighting the notions of genocide and genocidal intent, as well as that of joint criminal enterprise. The second is exposed by drawing attention to the uncertainties and ambiguities surrounding such notions as recklessness and *dolus eventualis*, and in addition to the frequent reliance in both international case law and the legal literature on customary international law and loose concepts such as proportionality. The authors finally point out that if the ICC tries to operate as a real criminal court under the rule of law and shows sensitivity to the rights and interests of the accused, US fears of politicized prosecution will diminish.

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