The Humanitarian Situation in Darfur and its Implication in International Law

Introduction

The devastating human tragedy, which currently engulfs the Darfur region, western Sudan, with its ethnic and cultural dimensions, should no longer be ignored by the international community. Yet the world’s response to this pressing situation falls dramatically short of meeting the minimum requirement for action that could help put a halt to the rapidly growing humanitarian crisis in the region. It is to be noted that the devastation in Darfur has been continuing for over a decade throughout the 1990s. The situation witnessed a turning point after the formation of the Sudan Liberation Movement/Army (SLM/A) and its declaration of guerrilla war against the government in February 2003. The SLM/A creation had been followed by the formation of the Justice and Equality Movement (JEM), which pursues similar objectives. Despite irrefutable evidence and reports of atrocities in Darfur it was only on 2nd April 2004 that the UN Security Council held a closed session to discuss the highly authoritative reports about ethnic cleansing in Darfur.

On 7th April 2004 while the world was commemorating the 10th anniversary of the 1994 Rwanda Genocide, the UN Secretary General expressed his sense of “foreboding” about the imminent threat of genocide in Darfur and asked the world community to be prepared for action – including military intervention – to save the lives of the people of Darfur. The UN Secretary General’s call is yet to be heeded. The world history is replete with examples when timely interventions of the international community in similar situations saved lives and brought relief to those who desperately needed it. Ironically, inaction in the part of the international community to face intransigent regimes has led to untold sorrow in recent history. Lessons should be learned from the Rwanda genocide and the ethnic cleansing in Burundi, Kosovo and Bosnia and Herzegovina.
However, it is a matter of grave concern and disappointment to note that the same apathy, idleness and indifference that surrounded the Rwanda genocide are all too evident in the present looming tragedy in Darfur where an imminent killer genocide is actively in the build up. In this respect the words of General Romeo Dallaire's should always ring in our ears when he passionately questioned: **how did the world stand by and watch the genocide in Rwanda without lifting a finger?** To General Dallaire we must say that there were historical moments when the moral and ethical resolve of humanity either freezes or evaporates. It's not just unconscionable; it's inexplicable. The excruciating truth is that the crisis in Darfur would have not reached this far if the Sudanese political leadership and elites have not been consumed by complicity, denial and fear. It would have not reached this tragic development if the UN and the regional and international public opinions were energized around this imminent crisis as they were energized around the war on terrorism. Under the circumstances it was all too possible that thousands of innocent people could have been still alive today and that many more thousands especially women and children could have been spared the agony of wandering the landscapes of Africa, dying, bewildered, forlorn, anguished, hungry, despairing and abandoned.

**Political and Legal Dimensions of the Crisis**

As the undisputed evidence about the ethnic cleansing in Darfur is emerging everyday, decisive political and legal actions should be undertaken as a matter of priority. Actions should not only be at the national and regional levels – as the government of Sudan so desperately wishes – but also with the active involvement of the international community. Because of the magnitude and nature of the crimes in Darfur it is, therefore, all too appropriate that the political and legal dimensions of the crisis be addressed by the highest international body in charge of global peace and security i.e. the UN Security Council.

The complex political dimension observed in multi-lateral set-ups and negotiation systems is beyond the purview of this document, which is mainly meant to give a brief account of the possible aspects for legal action – according to international law – which are to be observed when addressing the criminal dimension of the crisis in Darfur. Our ultimate objective is to lay down some ideas that could serve as the foundation for action to end impunity of the perpetrators of the crimes committed in Darfur, thus contributing to the prevention of their future occurrence. However, immediate political action should be concerned with protecting the civilian victims of the killing and destruction in Darfur from attacks of the army and its allied militia groups or *(Janjaweed)* and with providing them with the necessary relief material, protection and comfort.
Aspects of the Darfur Crisis in International Law

To gain preliminary understanding of the legal implications of the current situation in Darfur, the following six elements should be taken into consideration:

1. The mass and indiscriminate killing and targeting of indigenous African tribes of Darfur, including members of the Fur, Massaleet and Zagawa communities, destruction of their properties and livelihoods, imprisonment of members of these tribes in typical concentration camps-like conditions, abduction of children, gang rape of women and girls, the deliberate deportation and forced displacement of these communities from their areas of usual residence and the occupation of their land and confiscation of their livestock and wealth, was no doubt one of the most wicked criminal enterprises in the recorded history of Sudan.

2. The consequences of this crime are observed, both in terms of the physical destruction and impoverishment of the victims of atrocities who continue to lose lives, land, livestock and other material wealth at an alarming rate and also in terms of the flourishing and enrichment of the groups and individuals that perpetrate the mass killing, pillage of livelihood and forced deportation of the indigenous African tribes from their habitat, through the illegal appropriation of their land, looting of their livestock and wealth.

3. The continuing massive military build-up in Darfur and the unprecedented reliance by the government on Arab tribal militia groups especially the “Janjaweed” to fight a proxy war against civilian populations belonging to the African tribes of Darfur and that government is aware of the Janjaweed’s desire to commandeer and requisition land and their lust for looting and war booty.

4. Public media pronouncements made by top government officials, including General Omar El-Bashir, since April 2003 in which they vowed to crush the armed resistance of the indigenous people of Darfur by all possible means including “the use of the army, police, Popular Defence Forces (paramilitary formations), Mujahedeen and the horseback men or Janjaweed” is an additional indication of the government’s direct responsibility and cardinal role in sanctioning the crimes that are being committed in Darfur.
5. No meaningful national efforts were made to provide the victims with atonement and relief for the systematic and massive grievances inflicted upon them as guaranteed by international human rights and humanitarian law. It is obvious that the deliberate damage caused requires a long-term restoration process. In reality policies of the government of Sudan are part and parcel of the crisis and therefore it will be naïve to expect the government to embark on any serious and effective efforts to bring the perpetrators of the crimes committed in Darfur to justice or compensate the victims for the human and material loss they incurred.

6. The Sudan is a State Party to a number of regional and international human rights instruments, which are legally and morally binding upon it. For example the Sudan is a State Party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the African Charter on Human and Peoples’ Rights and the African Charter on the Rights and Welfare of the Child. The Sudan is signatory to the Rome Statute of the International Criminal Court (ICC) and as such it commit itself to refrain from committing acts which defeat the object and purpose of the Rome Statute.

7. The government of Sudan and the warring factions in Darfur are bound to respect the International Humanitarian Law in particular the mandatory provisions of Article 3, which is common to the Four Geneva Conventions and which applies in the situation of armed conflict not of international nature.

By substantiating, consolidating and accepting these six findings then the massive violations of human rights and humanitarian law in Darfur should be placed within their proper context of relevant international criminal law. It should be remembered that international law has set precedents in similar situations in which such massive violations and atrocities were identified through the use of a number of interlinked legal terms such as War Crimes, Crimes against Humanity, Ethnic Cleansing and or the Crime of Genocide. Taking into account the provisions of relevant international law, it can be proved beyond any doubt that the carnage in Darfur well fits any or all of the characteristics of War Crimes, Crimes against Humanity, Ethnic Cleansing and/or the Crime of Genocide. All these crimes have no statute of limitations in international law. Indeed, all these crimes fall under the jurisdiction of the Rome Statute of the ICC, which was adopted by the international community on 17th July 1998.
War Crimes, Crimes against Humanity

According to the UN General Assembly Resolution 3074 (XXVIII) of 3rd December 1973 on the Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, all states are required to cooperate in bringing such persons to justice. The Charter of the Nuremberg War Crimes Tribunal defined crimes against humanity in these words: “Murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population … whether or not in violation of the domestic law of the country where perpetrated.” In its definition of crimes against humanity, the Rome Statute of the International Criminal Court added the following conditions to the language employed by the Nuremberg Charter:

(a) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(b) Torture;

(c) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(d) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(e) Enforced disappearance of persons;

(f) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

The Nuremberg Charter gave jurisdiction to the Tribunal to try crimes against peace, or the crime of aggression i.e. (‘planning, preparation, initiation or waging of a war of aggression …’). Tribunals were also empowered to try war crimes i.e. (‘violation of the laws and customs of war … including murder, ill-treatment, or deportation to slave labour or for any other purpose of civilian population of or in occupied territory …’). According to the Rome Statute of the International Criminal Court the atrocities and crimes that are being committed in Darfur
constitutes war crimes and crimes against humanity. They represent grave breaches of Article 3, which is common to the Four Geneva Conventions of 12th August 1949. Article 3 of the Four Geneva Conventions is mandatory in nature and governs the conduct of all the warring factions in situations of armed conflict not of international nature, namely, any acts committed against persons taking no active part in hostilities such as civilian populations but also members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause.

**The Crime of Genocide**

In 1948 the United Nations Organisation promoted the Convention on the Prevention and Punishment of the Crime of Genocide. By the end of 2005, the Genocide Convention had been ratified or acceded to by 137 countries, including Sudan which acceded to it on 13th October 2003. The preamble to the Convention recognized that “genocide is a crime under international law”, and that “at all periods of history genocide has inflicted great losses on humanity” and that “Being convinced that, in order to liberate mankind from such an odious scourge, international cooperation is required”. The last assertion is specifically important as it refutes the tendency of the government of Sudan to mislead the international community by claiming that the ongoing crisis in Darfur is an internal affair and should be addressed through local or national means. Both the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and the 1998 Rome Statute of the International Criminal Court stated that “Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

a. *Killing members of the group;*
b. *Causing serious bodily or mental harm to members of the group;*
c. *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
d. *Imposing measures intended to prevent births within the group;*
e. *Forcibly transferring children of the group to another group.***

It is to be stated that international law experts consider that the Nuremberg Charter as well as the Rome Statute of the International Criminal Court did not, in fact, create new law, but rather they have declared and confirmed concepts of international criminality, which had been accepted over centuries by all civilizations. It is generally accepted by international law experts that all acts
so reprehensible as to offend the conscience of mankind, directed against civilian populations or combatants alike are crimes in international law. It was also agreed that putting an end to these crimes and prosecuting their perpetrators are legitimate concerns and even responsibility of all members of the international community. These principles should be the basis upon which efforts to restore justice to the people of Darfur should be based. They should also be the basis for swift and decisive action to prosecute those responsible for the atrocities committed in Darfur including top government officials. Prosecution should be against all persons responsible for the destruction campaign in Darfur whether their implication in the destruction was provoked by commission or omission.

**Conclusion**

In conclusion, it should be made clear that prosecution of the perpetrators of the massive criminal acts committed against civilian populations in Darfur is based on justice and law. An injustice without remedy, relief and atonement is abhorrent to the spirit of law, fundamental justice and good conscience as vacuum is abhorrent to nature. Under the circumstance all the necessary measures should be considered to render justice to the victims of the heinous crimes committed in Darfur and to ensure that such atrocities will not be committed against them in the future. An important aspect in this process should be the speedy establishment of an effective and well-resourced mechanism to bring the perpetrators of the criminal acts committed against civilians in Darfur to justice. Equally, it is of pivotal importance that immediate and sincere efforts should also be made to repair the damage done to the indigenous African people of the region and to compensate the direct victims and their descendants for their tremendous human and material loss as well as the immeasurable agony and sorrow ingrained in their minds and spirits by these acts. While the main share of this reparations process should fall on the government of Sudan from its national treasury, intervention of the international community should be solicited to guarantee its effective and just implementation. To this effect all possible human and material resources should be mobilized to render this scheme possible.

Finally, it will be useful to base our quest to render justice to the victims of the ethnic cleansing in Darfur and holding accountable the perpetrators of atrocities committed in the region on the following 6 points:

1. Two criminal aspects underpin the ethnic cleansing in the Darfur region viz.
a) The premeditated and systematic mass killing and physical destruction – in whole or in part – of the indigenous African tribes of Darfur such as the Fur, Massaleet and Zaghawa because of their ethnic and/or tribal backgrounds; and

b) The appropriation of the victims' land, the confiscation of their livestock and other material wealth and in some cases for extortion of money for protection by the militia groups in the absence of government authority.

2. The damage caused is assessable quantitatively and numerically.

3. The victims and their descendants are known and identifiable both as individuals and as groups belonging to the African tribes of Darfur collectively referred to by the Janjaweed as Zurga.

4. The perpetrators of the crime and their descendants are known and identifiable in the person of the leaders and elements of the Janjaweed militiamen, as well as some prominent public figures in the services of the government of Sudan.

5. Pursue of justice as well as the quest to ending impunity so far enjoyed by the perpetrators of these heinous crimes require that persons responsible for the crimes committed in Darfur be brought to equitable justice.

6. Fundamental justice requires that the collective damage done to the victims of the armed conflict in Darfur be repaired and that individual direct victims and/or their descendants be financially compensated for their losses.

7. Numerous legal precedents were set out by international law for the prosecution of the perpetrators of war crimes, crimes against humanity, ethnic cleansing and the crime of genocide. International mechanisms set up by the UN Security Council to prosecute similar crimes are currently operational as in the case of the treatment of persons indicted for war crimes in the Former Yugoslavia and the 1994 genocide in Rwanda.

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