

**GENOCIDE: A CRITICAL ANALYSIS OF THE DARFUR CONFLICT IN SUDAN**

Submitted in partial fulfilment of the requirements of the degree LLM (Human Rights and Democratisation in Africa) Faculty of Law, Centre for Human Rights, University of Pretoria

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**31 October 2005**

## DECLARATION

I, Chacha Bhoke, do hereby declare that this dissertation is my original work. It has never been submitted to any other University or institution whatsoever. Where other people's works have been used, references have been provided, and in some cases, quotations made. It is in this regard that I declare this work as originally mine. This dissertation is hereby submitted in partial fulfilment of the requirements for the award of the Master of Laws (LL.M) Degree in Human Rights and Democratisation in Africa.

Signed at Maputo, Moçambique

By ..... Date.....  
Chacha Bhoke  
(Student).

And

..... Date .....

Dr. Paulo Comoane.  
(Supervisor).

## DEDICATION

To the victims of the attacks and killings in Darfur.

These people are in desperate need and we must help them. Call it a civil war....call it genocide. Call it 'none of the above'. The reality is the same: there are people in Darfur who desperately need our help.

Colin L. Powell, (Former US Secretary of State) Written remarks before the Senate Foreign Relations Committee, 'The crisis in Darfur' US Department of State, Washington, DC, 9 September 2004.

..... Such crimes cannot be reversed. Such failures cannot be repaired. The dead cannot be brought back to life. So what can we do? First, we must all acknowledge our responsibility for not having done more to prevent or stop genocide.....In this connection, let me say here and now that I share the grave concern expressed last week by eight independent experts appointed by this Commission at the scale of reported human rights abuses and at the humanitarian crisis unfolding in Darfur, Sudan.....But let us not wait until the worst has happened, or is already happening. Let us not wait until the only alternatives to military action are futile hand-writing or callous indifference. Let us, Mr. Chairman, be serious about preventing genocide. Only so can we honour the victims whom we remember today. Only so can we save those who might be victims tomorrow.

Koffi Annan, Secretary-General of the United Nations, in a speech addressing members of the UN Commission on Human Rights on the 'Action Plan to Prevent Genocide' commemorating the 10<sup>th</sup> anniversary of the 1994 Genocide in Rwanda, Geneva, 7 April 2004. Press Release, SG/SM/9197 AFR/893, HR/CN71077.

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Chacha Bhoke

Maputo, Moçambique, 31 October 2005.

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## ABBREVIATIONS

AEGIS	AEGIS Trust, Nottinghamshire
A-G	Attorney General
ASICL	African Society of International and Comparative Law
ASIL Proceedings	American Society of International Law Proceedings
ASILS Int. Law. J.	Association of Student International Law Societies International Law Journal
AU	African Union
AU/Dec.	African Union Decision
CHR	Centre for Human Rights, University of Pretoria
CILSA	Comparative and International Law Journal of Southern Africa
CRS Report	Congressional Research Service Report
Duke Law.J	Duke Law Journal
Genocide Convention	Convention on the Prevention and Punishment of the Crime of Genocide
Georgia J. Int. & Comp. Law	Georgia Journal of International and Comparative Law
Houston J. Int. Law	Houston Journal of International Law
HRQ	Human Rights Quarterly



HRW Report	Human Rights Watch Report
ICC	International Criminal Court
ICG Africa	International Crisis Group (Africa)
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
ILC Report 1996	International Law Commission Report 1996. Draft Code of Crimes against the Peace and Security of Mankind
ILR	International Law Reports
ILSA Int. & Comp. Law	International Law Students Association Journal of International and Comparative Law
ILSA	International Law Students Association
Loyola of Los Angeles Int. & Comp. Law J.	Loyola of Los Angeles International and Comparative Law Journal
Mc Gill Law J.	McGill Law Journal
MSF	Médicins Sans Frontières
PHR Report	Physicians for Human Rights Report
PSC of the AU	Peace and Security Council of the African Union
Report of HCHR	Report of the High Commissioner for Human Rights and Follow-up to the World Conference

	on Human Rights, 'Situation in Darfur region of the Sudan'
Report of ICID	Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, 25 January 2005, Geneva. Submitted pursuant to the United Nations Security Council Resolution 1564 (2004).
Report of the African Commission	Report of the African Commission for Human and Peoples' Rights Fact-Finding Mission to Sudan in the Darfur Region
Report of the Pan-African Parliament	Report of the Pan-African Parliament Fact Finding Mission on Darfur, Sudan
Rome Statute	Rome Statute of the International Criminal Court
S.Con.Res.	The United States of America House of Congress Resolution 467 declaring genocide in Darfur, Sudan, at its 108 <sup>th</sup> Congress
Security Council Res.	United Nations Security Council Resolution
Statute of the ICTR	Statute of the International Criminal Tribunal for Rwanda
Temp.Int. & Comp. Law J.	Temple International and Comparative Law Journal
Texas Int. Law J.	Texas International Law Journal
The 1985 Genocide Study	Study on Genocide by the United Nations Human Rights Commission, 1985.
The Nuremberg Charter	Charter of the International Military Tribunal, at Nuremberg

The Yale J. Int. Law	The Yale Journal of International Law
U.N.G.A. Res.	United Nations General Assembly Resolution
U.N.T.S.	United Nations Treaty Series
UK Report	Report of the United Kingdom Parliament, House of Commons Select Committee on International Development
UK	United Kingdom
UN	United Nations
UNTAET/REG	Regulation on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, United Nations Transitional Administration in East Timor
US	United States of America
Virginia J. Int. Law	Virginia Journal of International Law

## DEFINITION OF TERMS

- Arab(s)** Whenever it appears in this work, the term “Arab” or “Arabs” is used to describe the Arab and Arab-speaking ethnic groups of nomadic and semi-nomadic people who have been recruited and deployed as *Janjaweed* militias in Darfur. The Arabs and Arab speaking nomads inhabit the North and South of Darfur.
- Black Africans** In this work, as it may appear from time to time, the term “Black Africans” is used in the context of the Darfur conflict, interchangeably with the word “victims” to describe, and refers to the principle victims of the government’s military campaign of attacks and killings in Darfur: Members of the three African ethnic tribes or groups, namely, the “*Zaghawa, Massalit and Fur*”- referred to collectively as “Black Africans” or “Blacks”. See House of Commons, ‘Sudan: Conflict in Darfur’ Research Paper, 04/51(23/6/2004)7, <<http://hcll.hclibrary.parliament.uk/notes/iads/snla-02155.pdf>> (accessed 1/3/2005).
- Commission** As may appear from time to time in this work, ‘Commission’ refers to the International Commission of Inquiry on Darfur.
- Darfur** The word Darfur comes from the word ‘Dar’ which corresponds to ‘homeland or home territory’. Therefore ‘Darfur’ means ‘homeland of the Fur’, see US Department of State ‘Documenting Atrocities in Darfur’ State Publication 11182, released by the Bureau of Democracy, Human Rights, Labour and the Bureau of Intelligence (September,2004),<<http://www.state.gov/g/drl/rls/36028.htm>> (accessed 20/5/2005). Darfur is the region in the Western part of Sudan. It has an estimated population of 6 million people. Darfur borders with Libya, Chad, and Central African Republic. Since 1994, the region has been divided administratively into three States of North, South and West Darfur. The major urban centres include the capitals of the three Darfur States, Nyala in the South Darfur, El-Geneira in West Darfur, and El-Fashir, the capital of North Darfur. See Report of the International Commission of Inquiry on Darfur to the United Nations

Secretary-General, 25 January 2005. Submitted pursuant to the United Nations Security Council Resolution 1564 (2004) 20, para 51.

**Janjaweed**

*Janjaweed* is an Arabic colloquialism from the Darfur region, and generally means 'a man (a devil) on a horse'. The term specifically denotes militias from mainly Arab tribes who were attacking, killing, raping, displacing victims from their homes, destroying the villages and looting properties of the victims in Darfur. In the Darfur conflict, the term refers to the Arab militia acting, under the authority, with the support of, complicity or tolerance of the Sudanese authorities, and who benefit from impunity for their actions. For a discussion on *Janjaweed*, see Report of the International Commission of Inquiry on Darfur, as above, paras 98-116.

**Government forces**

In this work, the term refers to the Sudanese government forces.

**Mission**

The word 'Mission' refers to the African Commission for Human and Peoples' Rights Fact-Finding Mission to the Republic of Sudan in the Darfur Region.

## CHAPTER 1

### INTRODUCTION

#### 1.1 Overview

This study poses a critique to past studies on the Darfur conflict on the question of genocide. It analyses facts about the conflict in relation to the law on genocide so as to find out whether facts can meet the definition of the crime of genocide. The study is limited to the legal issue—whether genocide was committed in Darfur between 2003 and 2004. It does not intend to introduce the background to the conflict; rather, facts are only applied in the legal arguments.<sup>1</sup>

#### 1.2 Research problem

The international community is divided in respect of what actually occurred in Darfur. There are different views on the conflict. Some reports show that the conflict cannot be characterised as genocide, but rather atrocities namely, war crimes and crimes against humanity.<sup>2</sup> Yet others indicate that, apart from crimes against humanity and war crimes,

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<sup>1</sup> On the Darfur conflict, see generally, Report of the International Commission of Inquiry on Darfur to the UN Secretary-General, 25/1/2005, Geneva. Submitted pursuant to the UN Security Council Resolution 1564(2004) 1-176 (Report of ICID), available at <[http://www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)> (accessed 11/10/2005). See appendix 5; Report of the UN High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights, 'Situation of Human rights in the Darfur region of the Sudan' 7/5/2004, E/CN.4/2005/3 (Report of HCHR) 1-25; Report of the African Commission on Human and People's Rights Fact-Finding Mission to Sudan in the Darfur Region, 8-18/7/2004 (Report of the African Commission) 1-29; Report of the Pan-African Parliament Fact Finding Mission on Darfur, Sudan, AU/PAP/RPT/CIRCR.CTTEE, 23/2/2005, Pan-African Parliament, 3<sup>rd</sup> Ordinary session, 29/3-11/4/2005 (Report of the Pan-African Parliament); Written Statement submitted by the African Society of International and Comparative Law (ASICL) to the UN Commission on Human Rights 'Question of the violation of human rights and fundamental freedoms in any part of the world', 11/3/2004, (E/CN.4/2004/NGO/203) 1-7; Human Rights Watch 'Darfur destroyed; Ethnic cleansing by Government and Militia forces in Western Sudan' (HRW Report) May 2004, Vol.16 No.6(A) 1-63; Human Rights Watch 'Darfur in Flames: Atrocities in Western Sudan' Vol. 16. No. 5 (A) April 2004; AEGIS 'Darfur: Management of a genocidal crisis' Summary Report No.S01/04 (AEGIS) (2004) 1-16; International Crisis Group (ICG) Africa 'Sudan: Now or Never in Darfur' Report No.80, (23/5/2004) 1-20; ICG Africa 'Darfur Rising: Sudan's new crisis' Report No. 76, (25/5/2005) 1-44; Congressional Research Service 'Sudan: The Darfur crisis and the status of the North-South negotiations' Report for Congress (CRS Report), Order Code RL 32643, (22/10/2004) 1-25; US Department of State 'Documenting atrocities in Darfur' State Publication 11182, Bureau of Democracy, Human rights, Labour and the Bureau of Intelligence, 2004, available at <<http://www.state.gov/g/drl/rls/36028.htm>> (accessed 20/5/2005); Council on Foreign Relations 'Giving meaning to never again', Council Special Report No.5, 2004, available at <[www.cfr.org](http://www.cfr.org)> (accessed 1/5/2005); Physicians for Human Rights (PHR) Report 'PHR calls for intervention to save lives in Sudan: Field team compiles indicators of genocide' (23/6/2004) 1-14; House of Commons 'Sudan: Conflict in Darfur' Research Paper 04/51 (23/6/2004) 1-27, available at <<http://hcll.hcllibrary.parliament.uk/notes/iads/snria-02155.pdf>> (accessed 1/3/2005); Report of the UK Parliament, House of Commons Select Committee on International Development, 5<sup>th</sup> Report, 30/3/2005, <<http://www.publications.parliament.uk/pa/cm200405/cmintdev/67/67i.pdf>> (accessed 23/9/2005), (UK Report); Médecins Sans Frontières (MSF) 'Humanitarian situation in Darfur, Sudan-MSF Statement to the UN Security Council', MSF Reports 24/5/2004, available at <<http://www.msf.org>> (accessed 30/5/2005).

<sup>2</sup> Report of ICID, as above, paras 489-522. This is also the view by the African Union (AU), See AU decision on Darfur, Assembly of the African Union, 3<sup>rd</sup> Ordinary Session, 6-8/7/2004, Addis Ababa, (Assembly/AU/Dec.54 (III), (Appendix 4); Communiqué of the 12th Meeting of the Peace and Security

there was also genocide in Darfur.<sup>3</sup> Still, other reports indicate that the Darfur conflict is characterised by “ethnic cleansing”.<sup>4</sup> Clearly, there is a disagreement on what happened in Darfur. It is from the above views that this study borrows the statement by Arendt that:

All sorrows can be borne if you put them into a story or tell a story about them. The story reveals the meaning of what would otherwise remain an unbearable sequence of sheer happenings... All her stories are actually anecdotes of destiny; they tell again and again how at the end we shall be privileged to judge.<sup>5</sup>

In the context of this study, the above statement reflects how the present study analyses the conflict and concludes at the end. It gives its own view on the conflict. This study has one central question: ‘*Was genocide committed in Darfur?*’ To answer this question, the study examines whether elements of genocide manifested in Darfur.

### 1.3 Hypothesis

This study proceeds with a presumption that genocide was committed in Darfur on the ground that if some of the acts of genocide materialised in Darfur then intent to commit genocide can be inferred.

### 1.4 Aims and significance of the study

The main objective of this study is to identify whether there was genocide in Darfur. It is important to deal with genocide especially at this moment when the international community stands at a crossroads with different approaches on the conflict. It is important to determine it as genocide in Darfur because there are indicators of genocide.<sup>6</sup> The study may be helpful to

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Council, The Peace and Security Council (PSC) of the AU, Meeting in its 12<sup>th</sup> meeting, at ministerial level, 4/7/2004, PSC/MIN/ Comm. (XII), paras 1&2 (Appendix 3).

<sup>3</sup> The United States of America House of Congress Resolution 467 declaring genocide in Darfur, Sudan, at its 108<sup>th</sup> Congress, 2<sup>nd</sup> Session (In the House of Representatives), 24/6/2004; The Senate of the United States of America (S.Con.Res.124), 108<sup>th</sup> Congress, 2<sup>nd</sup> Session, 13/7/2004; S.Con.Res 133, introduced and passed by Senate on 22/7/2004, (Appendix 1); Former US Secretary of State, Colin L. Powell, also stated that there was genocide in Darfur. See US Department of State ‘The crisis in Darfur’, <<http://www.state.gov/secretary/former/powell/remarks/36032.htm>> (accessed 20/5/2005). The US went a step further and proposed a Bill to enact an Act to impose sanctions against perpetrators of genocide in Darfur. See ‘Darfur Genocide Accountability Act of 2005’, 109<sup>th</sup> Congress, 1<sup>st</sup> session, House of Representatives 1424, (17/3/2005), available at <<http://www.theorator.com/bills109/hr1424.html>> (accessed 5/7/2005), (Appendix 2).

<sup>4</sup> HRW Report (n 1 above) 1. In this report, HRW has documented a pattern of human rights violations in West Darfur that amount to a government policy of ‘*ethnic cleansing*’ of certain ethnic groups, namely the *Fur*, *Zaghawa* and the *Massalit* from their areas of residence. The report states: “The government of Sudan is responsible for ‘ethnic cleansing’ and crimes against humanity in Darfur...”

<sup>5</sup> H Arendt (1968) 104, quoted in TLH McCormack (ed), (1997) *The law of war crimes: National and international approaches*, (in the introductory mark).

<sup>6</sup> PHR Report (n 1 above) 4-10. PHR identifies these indicators as consistent pattern of attacks on civilians, destruction of villages, destruction of livelihood and means of survival, hot pursuit with intent to eradicate villagers, consistent pattern of targeting non-Arabs, and systematic rape.

the international judicial bodies in the determination of genocide. Also, it poses a critique to the past studies on Darfur on genocide.

### **1.5 Literature survey**

The International Commission of Inquiry on Darfur,<sup>7</sup> the African Union (AU),<sup>8</sup> Pan-African Parliament<sup>9</sup>, the African Commission on Human and Peoples' Rights,<sup>10</sup> and the UK Parliament<sup>11</sup> studied the conflict in Darfur and concluded that there was no genocide but crimes against humanity and war crimes. This study does not oppose the finding on crimes against humanity and war crimes but genocide. Human Rights Watch<sup>12</sup> concluded that the atrocities committed in Darfur amount to ethnic cleansing leading to war crimes and crimes against humanity.<sup>13</sup> Physicians for Human Rights specified indicators of genocide in Darfur.<sup>14</sup> The US Congress<sup>15</sup> passed a resolution declaring that genocide occurred in Darfur. This study analyses facts on Darfur in relation to the law on genocide.

### **1.6 Research method**

This study employs literature review. It is impracticable to obtain primary sources of information from the field by interview, which would mean, obtaining information from all parties to the conflict and the victims in order to strike a balance of views from all sides. This study relies on the secondary sources of information from previous reports of researches conducted in Darfur. However, the study critically analyses facts from those reports and comes up with its own view on the conflict. It does so by analysing facts in relation to the law on genocide.

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<sup>7</sup> Report of ICID, n 1 above.

<sup>8</sup> AU Decision, n 2 above.

<sup>9</sup> Report of the Pan-African Parliament, n 1 above.

<sup>10</sup> Report of the African Commission, n 1 above.

<sup>11</sup> UK Report, n 1 above.

<sup>12</sup> HRW Report, n 1 above.

<sup>13</sup> As above, 40.

<sup>14</sup> PHR Report, n 6 above.

<sup>15</sup> US Congress, n 3 above.



## **1.7 Limitations and scope of the study**

This study presents a critical analysis of the Darfur conflict between 2003 and 2004.<sup>16</sup> Admittedly, this study relies on the information from the field by other sources but with acknowledgment. The study analyses facts in relation to the law on genocide in order to find out whether the atrocities committed meet the definition of the crime of genocide. It does not deal with war crimes and crimes against humanity but genocide.

## **1.8 Chapters**

This work has four chapters. Chapter one is an introduction to the study. Chapter two discusses material elements of genocide and determination of a protected group. Chapter three discusses intent to commit genocide and poses a critique to past studies on Darfur. Chapter four shows conclusion and recommendations.

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<sup>16</sup> The fighting was intensive in Darfur during this period. However, studies indicate that hostilities began long before 2003. See AEGIS, (n 1 above) 6-8; Report of ICID, (n 1 above) paras 53-60.

## CHAPTER 2

### ACTS OF GENOCIDE

#### 2.1 Introduction

This chapter presents part of the discussion on genocide in Darfur. It deals with the material elements of genocide. A conceptual framework of genocide is provided. This study draws the concept from the legal instruments on genocide, case law as well as customary international law. It discusses the issue of the protected groups in order to determine the group in which the victims of the attacks fit. Then, it discusses acts of genocide in relation to the facts on Darfur. A conclusion is made at the end of the chapter.

#### 2.2 Genocide defined

The centrepiece in any discussion of the law of genocide is the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>17</sup> The Convention defines genocide as follows: “[G]enocide 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”.<sup>18</sup> This study adopts

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<sup>17</sup> Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by the UN General Assembly, U.N.G.A. Res. 260 A (III) on 9/12/1948. Entered into force on 12/1/1951; 78 U.N.T.S. 277 (Genocide Convention).

<sup>18</sup> Art II Genocide Convention, as above; on the same definition see art 4(2) Statute of the ICTY. Adopted pursuant to Security Council Res. 827, 48<sup>th</sup> Sess., 3217<sup>th</sup> meeting, U.N. Doc S/RES/827 (1993); art 2(2) Statute of the ICTR, Security Council Res. 955, 49<sup>th</sup> Sess., U.N. Doc. S/RES/955(1994); art 17 International Law Commission Report, 1996. Draft Code of Crimes against the Peace and Security of Mankind. Text adopted by the International Law Commission at its 48<sup>th</sup> Sess., 1996 and submitted to the General Assembly as part of the Commission’s Report covering the work of that session, U.N. Doc.A/51/10 (‘ILC Report 1996’); art 6 Rome Statute of the ICC (‘Rome Statute’). Adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of the ICC, at Rome, on 17/7/1998. Entered into force on 1/7/2002; s 4 Regulation No. 2000/15 On the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, United Nations Transitional Administration in East Timor, UNTAET/REG/2000/15(6/6/2000), <<http://www.un.org/peace/etimor/untaetR/Reg0015E.pdf>> (accessed 20/5/2005); art 11 Statute of the Iraq Special Tribunal, Established by the Coalition Provisional Authority. Became effective on 10/12/2003, available at <[http://www.cpa-iraq.org/human\\_rights/Statute.htm](http://www.cpa-iraq.org/human_rights/Statute.htm)> (accessed 14/3/2005); *Prosecutor v Goran Jelusic*, (Case No.IT-95-10) Trial Chamber, Judgment, (14/12/1999), para 59; *Prosecutor v Kayishema and Ruzindana*, (Case No. ICTR-95-1-T), Trial Chamber, Judgment, (21/5/1999), para 87. The concept of genocide was accepted in art 6(c) of the Charter of the International Military Tribunal, at Nuremberg, on 8/8/1945, 82 U.N.T.S. 284 (the Nuremberg Charter), and the word was first used in the indictment of 8/10/1945 whereby the major German war criminals were alleged to have conducted ‘deliberate and systematic genocide, viz. the extermination of racial and national groups, against the civilian populations of certain occupied territories in order to destroy particular races and classes of people and national, racial or religious groups’. See *Trial of the Major War Criminals Before the International Military Tribunal*, Nuremberg, 14 /11-1/10/1946, Official Documents (1947) 1 43-44; Study of the Question of the Prevention and Punishment of the Crime of Genocide, prepared by Nicodème Ruhashyamiko, 4/7/1978. U.N. Doc.E/CN.4/ Sub.2/416. For several cases where the term ‘genocide’ was used in connection with the Nazi offenders, see M Lippman (1994) ‘The 1948

this definition. It does not intend to discuss the historical origins<sup>19</sup> of the development in the codification of the law of genocide.<sup>20</sup>

United Nations General Assembly Resolution 96(I) affirmed that genocide is a crime under international law.<sup>21</sup> Like Resolution 96(I), the Convention declares genocide to be a crime under international law which parties 'undertake to prevent and punish'<sup>22</sup> and an "odious scourge" which has inflicted great losses on humanity.<sup>23</sup> Winston Churchill called genocide 'the crime without a name'.<sup>24</sup> Scholars recognise it as 'the ultimate crime, the pinnacle of evil'.<sup>25</sup> The ICTR recognised genocide as the 'crime of crimes'.<sup>26</sup>

### 2.3 Genocide under customary international law

The status of genocide under customary international law is significant because it determines the obligations of all states regarding genocide, whether or not they are party to the Genocide Convention. Most important sources conclude that obligations concerning

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Convention on the Prevention and Punishment of the Crime of Genocide: Forty Five Years Later' (1994) 8 *Temp.Int. & Comp. Law J.* 1 7-9.

<sup>19</sup> On the origins of genocide, see L R Beres 'International law: Personhood and the prevention of genocide' (1989) 1 *Loyola of Los Angeles Int. & Comp. Law J.* 1 25 stating that 'genocide' is "based upon the Greek word *genos* (race, nation or tribe) with the Latin *cide* (killing)"; L S Sunga (1997) *The emerging system of international criminal law: Developments in codifications and implementation* 105; R Lemkin (1944) *Axis rule in Occupied Europe: Laws of occupation, analysis of government, Proposals for redress* 79; S R Ratner & J S Abrams (1997) *Accountability for Human rights atrocities in international law: Beyond the Nuremberg legacy* 24-25; L A Steven 'Genocide and the duty to extradite or prosecute: Why the US is in breach of its international obligations' (1999) 39 *Virginia J. Int. Law* 1 426-466.

<sup>20</sup> On the legal prohibition, and the development of the concept of genocide, see generally, W A Schabas (2000) *Genocide in international law: The crimes of crimes* 1-101; W A Schabas 'Development in the law of genocide' in H Fischer & A McDonald (eds.), (2002) *Yearbook of international humanitarian law* 131-165; M Lippman 'Genocide: The crime of the century. The jurisprudence of the death at the dawn of the New Millennium' (2001) 23 *Houston J. Int. Law* 467 468-534; L J van den Herik (2005) *The contribution of the Rwanda Tribunal to the development of international law* 88-98; J S Morton 'The international legal definition of the crime of genocide' (2001) 7 *ILSA Int. & Comp. Law* 329 330-351; D L Nersessian 'The troubling contours of genocidal intent: Troubling jurisprudence from the International Criminal Tribunals' (2002) 37 *Texas Int. Law J.* 231 246-254.

<sup>21</sup> U.N.G.A. Res. 96(I), 1<sup>st</sup> Sess., 188-89, U.N. Doc. A/64/Add.1 (1949); J Webb 'Genocide treaty: Ethnic cleansing, substantive and procedural hurdles in the application of the Genocide Convention to alleged crimes in the Former Yugoslavia' (1993) 23 *Georgia J. Int. & Comp. Law* 2 391; N Robinson (1960) *The Genocide Convention: A commentary* 17.

<sup>22</sup> Genocide Convention, (n 17 above) art 1; *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v Yugoslavia)*, Preliminary Objections, ICJ Judgment and Reports (11/7/1996), para 31.

<sup>23</sup> Genocide Convention, (as above) preamble, paras 3 & 4.

<sup>24</sup> L Kuper (1981) *Genocide, its Political use in the Twentieth Century* 12.

<sup>25</sup> Nersessian (n 20 above) 236-237.

<sup>26</sup> *Prosecutor v Kambanda* (Case No. ICTR-97-23-S), Trial Chamber, Judgment and Sentence, (4/9/1998) para 16; *Prosecutor v Serushago* (Case No. ICTR-98-39-S), Trial Chamber, Sentence, (2/2/1999), para 15.

genocide are part of customary international law.<sup>27</sup> In particular, the ICJ recognised genocide's status under customary international law in the *Reservations* case that "[t]he principles underlying the Convention are principles which are recognised by civilised nations as binding on States, even without any conventional obligation".<sup>28</sup> Not only is genocide a crime under international law, but the prohibition of genocide is also recognised as a peremptory norm of international law (*jus cogens*).<sup>29</sup> The term *jus cogens* refers to a limited number of peremptory norms having the character of supreme law which cannot be modified by treaty or by ordinary customary law.<sup>30</sup> *Jus cogens* norms also give rise to obligations *erga omnes*, which are obligations owing to international community as a whole. As the ICJ explained: "Such obligations derive, for example, in contemporary international law, from the outlawing of acts...as of genocide, as also from the principles and rules concerning the basic rights of the human person...".<sup>31</sup> The ICTR also recognised that "[t]he crime of genocide is considered part of international customary law and, moreover, a norm of *jus cogens*".<sup>32</sup> And, that "[t]he Genocide Convention is undeniably considered part of customary international law".<sup>33</sup>

## 2.4 Stages of genocide

According to Gregory Stanton, "[g]enocide develops in eight stages: (1) classification--people are divided into "us and them"; (2) symbolism--when combined with hatred, symbols may be forced upon unwilling members of groups; (3) dehumanisation; (4) organisation--genocide is always organised, special army units or militias are often trained and armed; (5) polarisation--hate groups broadcast polarising propaganda; (6) identification—victims are identified and

<sup>27</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ Opinion (28/5/1951) 15, para 23; T Meron 'The Case for War crimes Trials in Yugoslavia' (1993) *Foreign Affairs* 122 131. *But see* B Ferencz 'Genocide: The Convention, Domestic laws, and State responsibility' (1989) *ASIL Proceedings* 314 326.

<sup>28</sup> *Reservations case*, as above; *Prosecutor v Jelusic*, (n 18 above), para 60.

<sup>29</sup> *Case Concerning Application of the Genocide Convention, (Bosnia and Herzegovina) v Yugoslavia (Serbia and Montenegro)*, ICJ Reports and Judgment (13/9/1993) 325, 440 (Separate opinion of *Ad hoc* Judge Lauterpacht).

<sup>30</sup> Steven (n 19 above) 439. A treaty or treaty provision that violates a *jus cogens* norm is void *ab initio*, see art 53 Vienna Convention on the Law of Treaties. Adopted on (22/5/ 1969), U.N.G.A Res. 2166(XXI); 2287(XXII). Entered into force on 27/1/1980, 1155 U.N.T.S.331.

<sup>31</sup> *The Case Concerning Barcelona Traction, Light and Power Company (Second Phase), (Belgium v Spain)*, ICJ Judgments and Report (2/2/1970) 3 para 32; Final Report of the Commission of Experts established pursuant to Security Council Res. 935 (1994), U.N. Doc.S/1994/1405, (9/12/1994) 30; M C Bassiouni (1992) *Crimes against humanity in international law* 491, 496. *But see* P Starkman 'Genocide and international law: Is there a cause of action?' (1984) 8 *ASILS Int. Law. J.* 1 18-21. On *jus cogens* and *erga omnes*, see J Dugard (2000) *International law: A South African perspective* 40-41.

<sup>32</sup> *Prosecutor v Kayishema and Ruzindana*, (n 18 above), para 88.

<sup>33</sup> *Prosecutor v Musema*, (Case No. ICTR-96-13-A), Trial Chamber, (27/1/2000), para 15; *Prosecutor v Rutaganda*, (Case No. ICTR-96-3). Trial Chamber, (6/12/1999), para 46.

separated out because of their ethnic, religious, *racial or national* identities; (7) extermination; and (8) denial—the perpetrators deny that they committed any crimes”.<sup>34</sup> Whether the Darfur conflict meets the stages above will be shown at a later stage in this work.<sup>35</sup>

## 2.5 Can victims in Darfur qualify as a protected group?

Article II of the Genocide Convention lists four groups: national, racial, ethnical or religious group. The drafting history does not record any meaningful discussion about use of the term ‘group’.<sup>36</sup> There remains considerable ambiguity in the scope of the terms ‘national, ethnical, racial, or religious group’.<sup>37</sup> However, the groups were defined by the ICTR Trial Chamber.<sup>38</sup> A national group was defined as “[a] collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties”,<sup>39</sup> an ethnic group was said to be “a group whose members share a common language or culture”,<sup>40</sup> a racial group was based on “hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors”,<sup>41</sup> and members of the religious group “share the same religion, denomination or mode of worship”.<sup>42</sup>

### 2.5.1 Ethnical, national, religious, racial group or none?

The Commission of Inquiry on Darfur found that “[t]he tribes who were victims of attacks and killings subjectively make up a protected group.”<sup>43</sup> The Commission stated that “[t]he victims

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<sup>34</sup> G Stanton ‘Stages of genocide’, available at <<http://www.genocidewatch.org/eightstages.htm>> (accessed 7/5/2005), emphasis in italic supplied. On the types of genocide, see Morton, as n 20 above; van den Herik, (as n 20 above) 135-138.

<sup>35</sup> See conclusion.

<sup>36</sup> Schabas, (2000, n 20 above) 106.

<sup>37</sup> Sunga, (n 19 above) 111; *Prosecutor v Musema*, (n 33 above), para 161; *The Prosecutor v Rutaganda*, (n 33 above), para 56.

<sup>38</sup> *Prosecutor v Akayesu*, (Case No. ICTR -96-4-T), Trial Chamber, Judgment, (2/9/1998), paras 510-516; *Prosecutor v Krstic*, (Case No.IT-98-33-T) Trial Chamber, Judgment, (2/8/2001), para 557.

<sup>39</sup> *Prosecutor v Akayesu*, as above, para 512.

<sup>40</sup> *Prosecutor v Akayesu*, as above, para 513; *Prosecutor v Kayishema and Ruzindana*, (n 18 above), para 98: “An ethnic group is one whose members share a common language or culture; or, a group which distinguish itself, as such (self identification); or, a group identified as such by others, including perpetrators of the crimes (identification by others).”

<sup>41</sup> *Prosecutor v Akayesu* (n 38 above), para 514; J D van der Vyever ‘Prosecution and punishment of the crime of genocide’ (1999) 23 *Fordham Int. Law. J.* 286 302.

<sup>42</sup> *Prosecutor v Akayesu*, as above, para 515; *Kayishema and Ruzindana*, n 40 above.

<sup>43</sup> Report of ICID, (n 1 above), para 512.

perceive the attackers as persons belonging to another and hostile group”.<sup>44</sup> It stated that “[t]here are other elements that tend to show a self-perception of two distinct groups. In many cases militias attacking the African villages tend to use derogatory epithets, such as “slaves”, “blacks”, or “*Zurga*” that might imply a perception of the victims as members of a distinct group.<sup>45</sup> It stated that “[t]hose tribes in Darfur who support the rebels have increasingly come to be identified as “Africans” and those supporting the government as the ‘Arabs’. The Arab-African divide has also been fanned by the growing insistence on such divide in some circles and in the media. All this has led to the consolidation of the contrast and gradually created a marked polarisation in the perception and self-perception of the groups concerned. At least those most affected by the conditions explained, including those directly affected by the conflict, have come to perceive themselves as either ‘African’ or ‘Arab’”.<sup>46</sup>

However, in its reasoning, the Commission stated that “[t]ribal groups, which have remained isolated, may be accepted on condition that the tribal group should also constitute a distinct “racial, national, ethnical or religious group”. In other words, tribes as such do not constitute a protected group”.<sup>47</sup> The Commission further stated that “[t]ribes may fall under the notion of genocide as set out in international law only if, as stated above, they also exhibit the characteristics of one of the four categories of group protected by international law”.<sup>48</sup> Although it concluded as the protected group subjectively, the Commission considered the victims in Darfur as groups that do not perfectly match the definitions of the four mentioned groups”.<sup>49</sup>

Arguably, the “Black Africans” the term referring to the tribal groups of *Zhagawa*, *Massalit* and *Fur*, do qualify as the “ethnic groups” as such because they match the definition of ethnic group under article II of the Genocide Convention. Both objectively and subjectively, “Black

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<sup>44</sup> As above, para 511.

<sup>45</sup> As above: “Epithets that eyewitness or victims reported to the Commission include the following: “This is your end. The Government armed me”. “You are *Massalit*, why do you come here, why do you take our grass?”, “You will not stay in this country.” “Destroy the *Torabora*.” “You are *Zaghawa* tribes, you are slaves.” “Where are your fathers, we would like to shoot and kill them.” During rape: “You are the mother of the people who kill our people.” “You are very cheap people, you have to be killed.” See n 189 in the Commission’s report.

<sup>46</sup> As n 43, para 510.

<sup>47</sup> As above, para 496.

<sup>48</sup> As n 43 above, para 497.

<sup>49</sup> As above, para 498, although not intentional, the Commission appears to have accepted that the victims qualify as “a hostile ethnic group” see para 520 first sentence; van den Herik (n 20 above) 134.

Africans” in Darfur fall under “ethnic groups” because the tribal groups are ethnic groups. As Schabas noted:

It is not difficult to understand why tribal groups fit within the four corners of the domain, whereas political and gender groups do not. Yet in concluding that tribal groups meet the definition of genocide, it seems unnecessary to attempt to establish within which of the four enumerated categories they should be placed.<sup>50</sup>

The same view is indicated in the International Law Commission Report, 1996: “The Commission was of the view that the present article covered the prohibited acts when committed with the necessary intent against members of a tribal group”.<sup>51</sup> The International Commission of Inquiry on Darfur stated that various tribes that have been the object of attacks and killings do not appear to make up ethnic groups distinct from the ethnic group to which persons or militias that attack them belong. They speak the same language (Arabic) and embrace the same religion.<sup>52</sup> This is a self-contradictory view because the Commission had reasoned earlier that the victims belong to a distinct group from the attackers as shown above.<sup>53</sup>

The fact that the “Black Africans” speak the same language with attackers does not deny the possibility of having a distinct ethnic group *per se*. In fact, the attackers were government soldiers accompanied by *Janjaweed*, the Arab militias who are different from the Black Africans.<sup>54</sup> Besides, “Black Africans” have historical roots in the region and speak a Nilo-Saharan language distinct from Arabic.<sup>55</sup> This shows linguistic character of a social group, their geographical origins or those of their forebears.<sup>56</sup> Moreover, the Commission had already admitted that “[m]embers of the African tribes speak their own dialect in addition to Arabic, while members of Arab tribes only speak Arabic”.<sup>57</sup>

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<sup>50</sup> Schabas (n 36 above) 112.

<sup>51</sup> ILC Report, 1996 (n 18 above), para 9, commentary to art 17.

<sup>52</sup> As (n 43 above), para 508.

<sup>53</sup> As above, paras 510-512.

<sup>54</sup> Report of ICID, (n 1 above), paras 98-116.

<sup>55</sup> J Jafari ‘Never Again’, Again: Darfur, the Genocide Convention, and the duty to prevent genocide’ (2004) 12 *Human Rights Brief* 19.

<sup>56</sup> For a discussion that ethnic groups are characterised by skin-pigmentation of its members, their national and geographical origins or those of their forebears, see M Sithole ‘Is Multi-Party Democracy Possible in Multi-Ethnic African State?’ in U Himmelstrand (1994) *African perspectives on development* 154.

<sup>57</sup> See n 54 above, para 508.

Black Africans qualify as ethnic groups because they consider themselves as being of a kind different from the *Janjaweed*.<sup>58</sup> Thus, they subjectively, perceive themselves as distinct groups from that of *Janjaweed*. In subjective terms, an ethnic group exists when those who belong to it define themselves as such in relating with 'outsiders' who also recognise the group of identity. The ICTR Trial Chamber held that:

For the purposes of applying the Genocide Convention, membership of a group is, in essence, a subjective rather than an objective concept. The victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction. In some instances, the victim may perceive himself... as belonging to the said group.<sup>59</sup>

However, the Trial Chamber reasoned that “[a] subjective definition alone is not enough to determine victim groups” and, relying on the *travaux préparatoires*, stated that “[t]he Genocide Convention was presumably intended to cover relatively stable and permanent groups. Therefore, the Chamber held that in assessing whether a particular group may be considered as protected from the crime of genocide, it will proceed on a case-by-case basis, taking into account both the relevant evidence proffered and the political, social and cultural context”.<sup>60</sup> In *Akayesu*, the ICTR Trial Chamber stated that:

The crime of genocide was allegedly perceived as targeting only 'stable' groups, constituted in a permanent fashion and membership of which is determined by birth, with the exclusion of the more 'mobile' groups which one joins through individual voluntary commitment, such as political and economic groups...It was necessary...to respect the intent of the drafters...which was clearly to protect any stable group. The Tutsi did indeed constitute a stable and permanent group and were identified as such by all.<sup>61</sup>

In objective terms, the “Black Africans” in Darfur fit as ethnic groups because of a common name, language, culture, political organisation and myth of common descent which foists a common destiny.<sup>62</sup> These, clearly indicate the social, political and cultural context as factors for objective determination of a protected group.<sup>63</sup> Further, the groups are permanent and stable in that they are products of births. Ethnic identity is not something the individual rationally decides to assume; it is 'natural', and the individual has no choice in the matter because it is an unchanging legacy of one's birth. All these, no doubt, are evidenced in the

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<sup>58</sup> For a discussion on 'ethnic group' conceiving itself as of a kind, see T Shibutan & K M Kwan (1965) *Ethnic stratification: A comparative approach* 47.

<sup>59</sup> *Prosecutor v Rutaganda*, n 37 above.

<sup>60</sup> *Prosecutor v Rutaganda*, as above, paras 57-58; *Prosecutor v Semanza*, (Case No. ICTR-97-20-T), Judgment and Sentence, Trial Chamber, (15/5/2003), para 317.

<sup>61</sup> *Prosecutor v Akayesu*, (n 38 above), paras 511, 516, 701-702.

<sup>62</sup> For a discussion that ethnic group has a common name, common descent and language, see E H Osaghe 'Ethnicity in Africa or African Ethnicity' in Himmelstrand (n 56 above) 138.

<sup>63</sup> As explained in *Prosecutor v Rutaganda*, n 60 above.



black community in Darfur: names of the *Zaghawa*, *Massalit* and *Fur* groups fit in the definition of ethnic groups under the Genocide Convention.

The Commission regarded the victims of attacks and killings in Darfur as belonging to the same group with persons or militias that attack them.<sup>64</sup> This does not deny the presence of 'auto-genocide' in Darfur. Auto-genocide refers to mass killing of members of the group to which the perpetrators themselves belong.<sup>65</sup> This meets the Genocide Convention definition.<sup>66</sup> Several commentators on the Genocide Convention have noted that "[n]either the Genocide Convention nor the *travaux préparatoires* requires that the targeted group be separate from the perpetrator's group in order for acts to constitute genocide".<sup>67</sup>

What is important to note, is that an 'ethnic group', and therefore, ethnicity, can and does exist among physically similar groups. In general, ethnic groups...are distinguished more by communal characteristics such as language or dialect and common boundary than physical appearance. And of more importance in distinguishing one ethnic group from another in the African context is language factor.<sup>68</sup>

Undoubtedly, the "Black Africans" in Darfur cannot qualify as "national" or "religious" groups under the Genocide Convention. Blacks do not meet the definition of the national group because a national group is "[a] collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties".<sup>69</sup> Neither victims nor perpetrators regard themselves as a national group. Darfur is not a nation either. It is an administrative region of one nation "Sudan".<sup>70</sup> Both perpetrators and victims belong to one

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<sup>64</sup> Report of ICID, (n 1 above), para 508.

<sup>65</sup> Schabas (n 36 above) 118.

<sup>66</sup> T Duffy 'Towards a culture of Human Rights in Cambodia' (1983) 16 *HRQ* 82 83; B Kiernan 'The Cambodian Genocide, 1975-1979' in S Totten & others (eds.), (1995) *Genocide in the Twentieth Century* 429-482. *But see* W Shawcross 'Persecutions on political, racial, or religious grounds' in R Gutman & D Rieff (eds.), (1999) *Crimes of war, What the public should know* 274.

<sup>67</sup> Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide. Study on Genocide by the UN Human Rights Commission, 1985. Prepared by Benjamin Whitaker, U.N. Doc.E/CN.4/Sub.2/1985/6, (2/7/1985) 16, ('1985 Genocide Study'). The 1985 Genocide Study characterised the Khmer Rouge's atrocities in Cambodia as auto-genocide'; H Hannum 'International law and Cambodian Genocide: The sounds of silence' (1989) 11 *HRQ*. 82 105; D Hawk 'The Cambodian Genocide' in I W Charney (ed.) (1988) *Genocide: A bibliographic review* 137; Ratner & Abrams (n 19 above) 33.

<sup>68</sup> Sithole, n 56 above.

<sup>69</sup> *Prosecutor v Akayesu*, n 39 above.

<sup>70</sup> Report of ICID, (n 1 above), para 51.

national group as such. On the 'religious group', the Blacks do not seem to have a distinct religion from that of the *Janjaweed*. Facts show that the groups embrace a common religion, and are Muslims.<sup>71</sup> There is no evidence to show that the conflict was a religious one.<sup>72</sup>

On the "racial group", the African Commission Fact-finding Mission appears to have confused between "racial" and "ethnic groups". In its reasoning, the Mission seems to have categorised "ethnicity" as a "racial group".<sup>73</sup> Arguably, the two are different as indicated in article II of the Genocide Convention.<sup>74</sup> While agreeing that the distinction may be perhaps 'harder to grasp', Special Rapporteur Doudou Thiam observed that the racial element refers more typically to common physical traits.<sup>75</sup>

The Mission also argued that "[t]here is a great deal of racial inter-relationship and inter-marriages amongst the tribes in Darfur over a long time".<sup>76</sup> This was also the view taken by the International Commission of Inquiry on Darfur.<sup>77</sup> Arguably, neither inter-racial marriages disapprove the possibility of having two distinctive races nor does it negate the possibility of having auto-genocide.<sup>78</sup> The fact that a racial group comprises two or more distinct groups does not prevent it from constituting "a particular racial group".<sup>79</sup> A racial group is defined as "[a] group of persons defined by reference to colour, race, and references to a person's racial group refer to any racial group into which he falls".<sup>80</sup> Derogatory words used by *Janjaweed*

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<sup>71</sup> As above, para 508. Identifying a 'religious group' involves identifying a religion. According to Lippman, "[r]eligious groups encompass theistic, non-theistic, and atheistic communities which are united by a single spiritual ideal" see Lippman (n 18 above) 29.

<sup>72</sup> For causes of the conflict, see sources cited in n 1 above.

<sup>73</sup> Report of the African Commission, (n 1 above) para 112. The mission's view may be supported by Shaw: "It is also rather difficult to distinguish between "ethnical" and "racial" groups...It is probably preferable to take the two concepts together to cover relevant cases rather than attempting to distinguish between these so that unfortunate gaps appear", see M Shaw 'Genocide and International Law' in Y Dinstein (ed.), (1989) *International law at a time of perplexity* 807.

<sup>74</sup> As explained in *Prosecutor v Akayesu*, n 40 & 41 above.

<sup>75</sup> Fourth Report on the Draft Code of Offences against the Peace and Security of Mankind, by Mr Doudou Thiam, U.N. Doc.A/CN.4/398, para 58.

<sup>76</sup> Report of the African Commission, n 73 above.

<sup>77</sup> Report of ICID, n 64 above.

<sup>78</sup> On auto-genocide, see arguments in n 65-67 above.

<sup>79</sup> Race Relations (Amendment) Act 2000 (UK), s 3, quoted in Centre for Human Rights (CHR) (2001) *International Yearbook of Regional Human Rights, Masters Programme* 41.

<sup>80</sup> As above, 120 s 1093.

such as “blacks”<sup>81</sup> indicate the perception that the Black Africans are a different race. By reference to colour as an indicator of race,<sup>82</sup> no doubt that “blacks” would fit in the definition of racial group as such. A racial group is based on hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factor.<sup>83</sup> The conflict in Darfur is driven by racism at both regional and central government levels.<sup>84</sup>

It is asserted that the Arabs of Darfur represent a well-defined ethnic group and attributed to the “Arab race” in the areas of governance and language.<sup>85</sup> Therefore, “Black Africans” fall under members of the ethnic and racial groups respectively. However, whether there was intent to destroy the two groups identified will be discussed.<sup>86</sup>

## 2.6 Were elements of genocide manifested in Darfur?

The definition of the crime of genocide consists of two important elements, namely the requisite intent (*mens rea*) and the prohibited act (*actus reus*). These two elements are specifically referred to in the initial phrase of article II of the Genocide Convention which states 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”. Whereas the first element of the definition is addressed in the opening clause of article II of the Convention, the second element is addressed in subparagraphs (a) to (e).<sup>87</sup>

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<sup>81</sup> The ICID seems to have admitted that ‘blacks’ represents a race. See para 511 of its Report; AEGIS compiled a report stating that: “The use of racist language during attacks is consistently reported by refugees. This provides evidence that attacks are driven by a racist ideology, and are not just attacks against the support base of the two rebel groups.” It contains statements like, “The *Janjaweed* want to steal from us, kill us and destroy us, because we are black”, quoting Amnesty International which documented numerous references to racist language in interviews with refugees: “You blacks, you have spoilt the country! We are here to burn you.” See AEGIS (n 1 above) 9. Reference to ‘blacks’ is a racial slur which was used by *Janjaweed*.

<sup>82</sup> Race Relations (Amendment) Act, n 79 above.

<sup>83</sup> *Prosecutor v Akayesu*, n 41 above.

<sup>84</sup> AEGIS (n 1 above) 7; ASICL, (n 1 above), para 11.

<sup>85</sup> AEGIS, as above, 8.

<sup>86</sup> See ch.3.

<sup>87</sup> Art II, n 18 above; ILC Report, 1996 (n 18 above) 32, para 4, commentary to art 17 ‘crime of genocide’; *Prosecutor v Jelusic* (n 18 above), para 62; *Prosecutor v Bagilishema*, (Case No. ICTR-95-1A-T) Trial Chamber, Judgment, (7/6/2001), para 55; *Compare Nersessian* (n 20 above) 256: “Genocide is a crime with three elements: one or more prohibited acts; against members of a protected group; committed with the intent to destroy, in whole or in part, a protected group. All three elements must be proved in order to establish the crime. The first two comprise the *actus reus*, or material component of the crime. The latter element comprises genocide’s *mens rea*, or requisite mental element”; Robinson (n 21 above) 54-55; Ratner& Abrams (n 19 above) 27.

### 2.6.1 Material elements

These refer to the prohibited acts which are contained in subparagraphs (a) to (e) of article II of the Genocide Convention: (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.

### 2.6.2 Were members of the group killed?

Having established that the “Black Africans” in Darfur do qualify as ‘ethnic groups’,<sup>88</sup> the next task is to find out whether the victims belonging to the group were killed. The International Commission of Inquiry stated that “[t]here is no doubt that some of the elements of genocide materialised in Darfur, and that there is substantial and reliable material which tends to show the occurrence of systematic killing of civilians belonging to certain tribes”.<sup>89</sup> These killings were conducted by *Janjaweed* and the Government forces.<sup>90</sup> It has been shown in this study that tribes do qualify as “ethnic groups” under article II of the Genocide Convention.<sup>91</sup> Other reports indicate that “ethnic targeting” was obvious.<sup>92</sup> Human Rights Watch documented reports showing killings targeting members of the *Fur, Zaghawa, and Massalit*.<sup>93</sup> The report indicates that mass killings of civilians took the form of extrajudicial execution of men.<sup>94</sup> It describes that 145 *Fur* men were killed in Wadi Salih on 5 March 2004.<sup>95</sup>

Such killings of members of the ethnic groups satisfy the requirements of killing members of the group under the Genocide Convention because reference to “killing members of the group” was interpreted by the ICTY Trial Chamber to mean ‘murder of members of the

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<sup>88</sup> On the groups, see part 2.5.1 above.

<sup>89</sup> Report of ICID, (n 1 above), para 507.

<sup>90</sup> HRW Report (n 1 above) 1-2, 7.

<sup>91</sup> Schabas, n 50 above; ILC Report 1996, n 51 above qualifying tribes as ethnic groups under the Genocide Convention.

<sup>92</sup> AEGIS (n 1 above) 10 quoting UN Inter-Agency Fact Finding and Rapid Assessment Mission (2004) Kailek Town, South Darfur; PHR Report (n 1 above) 8; CRS Report (n 1 above) 15.

<sup>93</sup> HRW Report (n 4 above).

<sup>94</sup> As above, 9.

<sup>95</sup> HRW Report, (n 93 above), 21 & 23: “The report shows that a similar hunt for men displaced from the burned villages took place in other areas of Wadi Salih. “The government and *Janjaweed* came and asked men aged between twenty and sixty”.

group'.<sup>96</sup> Killing members of the group suggests that the act itself must involve the killing of at least two members of the group.<sup>97</sup> The ICTR Trial Chamber stated that:

In addition to showing that an accused possessed an intent to destroy the group as such, in whole or in part, the Prosecutor must show the following elements: (1) the perpetrator intentionally killed *one or more members of the group*, without the necessity of premeditation; and (2) such *victim or victims* belonged to the targeted ethnical, racial, national, or religious group.<sup>98</sup>

From the above interpretation, deaths of 145 men belonging to the ethnic group of the *Fur* do qualify in terms of plurality. Killing members of the group requires two elements: "the victim is dead; and the death resulted from an unlawful act or omission of the accused or a subordinate".<sup>99</sup> Not only individuals but also the targeted group as such are the victim of genocide.<sup>100</sup> In Darfur reports have shown evidence of killings targeting members of the three tribes.<sup>101</sup> Deaths resulted from the killings by the *Janjaweed* and the government forces, thus, applying the interpretation given by the ICTR Trial Chamber that for it to amount to killing of members of the group, death must result from unlawful act or omission of the accused,<sup>102</sup> it can be said that such killings fall within the prohibited act of killing members of the group under article II (a) of the Genocide Convention. Although the number of victims is yet to be known with accuracy, no one can dispute the fact that widespread killings were perpetrated in Darfur. This can satisfy the material element of killing members of the group. As the ICTY Trial Chamber noted:

Although the Trial Chamber is not in a position to establish the precise number of victims ascribable to Goran Jelusic for the period in the indictment, it notes that, in this instance, the material element of the crime of genocide has been satisfied. Consequently, the Trial Chamber must evaluate whether the intent of the accused was such that his acts must be characterised as genocide.<sup>103</sup>

The figure shown above does not necessarily reflect the whole group as such, only some members of the targeted group. Thus, the victims in this scenario form '*part*' of the Black Africans in Darfur. In Darfur, the killed men represent a substantial part, although not necessarily a very important part of the targeted group of *Fur*. Therefore, they meet the definition of destruction by "killing members of the group" because they are a substantial part of the group.<sup>104</sup> They also represent a considerable number of individuals who are part of the

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<sup>96</sup> *Prosecutor v Jelusic*, (n 18 above), para 63 -interpreting art 4(2) (a) of the ICTY Statute.

<sup>97</sup> Schabas, (n 36 above) 158.

<sup>98</sup> *Prosecutor v Semanza*, (n 60 above), para 319. In para 316: 'no numeric threshold of victims necessary to establish genocide'. Emphasis in italics supplied.

<sup>99</sup> *Prosecutor v Akayesu*, (n 38 above), para 588.

<sup>100</sup> As above, para 521.

<sup>101</sup> Report of ICID, n 89 above; HRW Report, n 93 -95 above; PHP Report, n 92 above.

<sup>102</sup> *Prosecutor v Akayesu*, n 99 above.

<sup>103</sup> *Prosecutor v Jelusic* (n 18 above), para 65.

<sup>104</sup> On the destruction of a substantial part of the group, see ILC Report 1996, (n 51 above), para 18.

group.<sup>105</sup> If half of the members of a small group is targeted, this could constitute genocide, even if the number of targeted persons itself is not very high.<sup>106</sup> The ICTY has stated that genocide must involve the “[d]estruction of substantial part, although not necessarily a very important part”.<sup>107</sup>

### 2.6.3 Was there serious bodily or mental harm to members of the group in Darfur?

The International Commission of Inquiry on Darfur found that there was “larger-scale causing of serious bodily or mental harm to members of the population belonging to certain tribes”.<sup>108</sup> These tribes are the *Zaghawa*, *Massalit* and *Fur*. The Commission went further and stated that:

Arguably two elements of genocide might be deduced from the gross violations perpetrated by Government forces and the militias under their control. These two elements are first, the *actus reus* consisting of killing, or causing serious bodily or mental harm... In the case of Darfur this discriminatory and persecutory intent may be found, on many occasions, in some Arab militias, as well as in the Central Government: the systematic attacks on villages inhabited by civilians (or mostly by civilians) belonging to some ‘African’ tribes (Fur, Massalit and Zaghawa), the systematic destruction and burning down of these villages, as well as the forced displacement of civilians from those villages attest to a manifestly persecutory intent.<sup>109</sup>

Report of the African Commission indicates that “[r]ape and sexual violence, even though denied by the government, have been committed during the Darfur conflict. The mission heard reliable accounts detailing numerous cases of rape, and that some of the women became pregnant as a result of the rape”.<sup>110</sup> Human Rights Watch indicates that “rape appears to be a feature of most attacks in *Fur*, *Massalit*, and *Zaghawa* areas of Darfur”.<sup>111</sup>

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<sup>105</sup> ICTR held that ‘in part’ requires the destruction of a considerable number of individuals who are part of the group. See *Prosecutor v Kayishema and Ruzindana*, (n 18 above), paras 96-97; *Prosecutor v Bagilishema*, (n 87 above), para 64; *Prosecutor v Semanza*, (n 60 above), para 316: “[T]he intent to destroy must be at least to destroy a substantial part of the group”.

<sup>106</sup> The 1985 Genocide Study, (n 67 above), para 29.

<sup>107</sup> *Prosecutor v Jelusic*, (n 18 above), para 82; *Prosecutor v Sikirica and another*, (Case No.IT-95-8-T), Trial Chamber, Judgment on Defence Motions to Acquit, (3/9/2001), para 65; *Prosecutor v Kristic*, (n 38 above), para 598.

<sup>108</sup> Report of ICID, (n 1 above) para 507.

<sup>109</sup> As above, paras 518 & 519. The Commission also indicated words accompanied by rape such as “You are the mother of the people who are killing our people”, “You are very cheap people, you have to be killed”. See para 511 note 189 in the report of the Commission.

<sup>110</sup> Report of the African Commission, (n 1 above) para 116; PHR Report (n 1 above) 10 “[c]onsistent pattern of systematic rape of women”.

<sup>111</sup> HRW Report, (n 1 above) 17 “[r]ape and other forms of sexual violence”.

From the above facts, it is true that there were mass killings, systematic rape and sexual violence, forced displacement and deportation in Darfur. This affected members of the *Fur*, *Zaghawa* and *Massalit* groups. These acts, in essence, amount to the legal interpretation of “causing serious bodily or mental harm to members of the group” as contained in article II (b) of the Genocide Convention because “inhuman or degrading treatment, rape and deportation” fall within the scope of harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses”.<sup>112</sup>

The ICTR Trial Chamber stated that “[t]he phrase ‘causing serious bodily or mental harm’ could be construed to mean harm that seriously injures the health, causes disfigurement or causes any serious injury to the external, internal organs or senses”.<sup>113</sup> The Chamber also stated that inflicting serious bodily and mental harm is an inherent aspect of mass killing.<sup>114</sup> Deportation is an act that can constitute serious bodily or mental harm.<sup>115</sup>

Rape and sexual violence on women belonging to the *Fur*, *Massalit* and *Zaghawa* groups amount to ‘causing serious bodily or mental harm’ to members of the group because rape and sexual violence have been affirmed by the ICTR Trial Chamber as falling within the ambit of paragraph article II (b) of the Genocide Convention:

The Chamber wishes to underscore the fact that in its opinion, they constitute genocide in the same way as any other act as long as they were committed with the specific intent to destroy, in whole or in part, a particular group, targeted as such. Indeed, rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims and are even, according to the Chamber, one of the worst ways of inflicting harm on the victim as he or she suffers both bodily and mental harm...The Chamber finds firstly that the acts described *supra* are indeed acts as enumerated in Article 2(2) of the Statute (corresponding to article II(b) of the Genocide Convention), which constitute the factual elements of the crime of genocide, namely the killings of the Tutsi or the serious bodily and mental harm inflicted on the Tutsi....<sup>116</sup>

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<sup>112</sup> *Prosecutor v Karadzic and Mladic*, (Case Nos. IT-95-5-R61, IT-95-18-R61), Consideration of the Indictment within the Framework of Rule 61 of the Rules of Procedure and Evidence, (11/7/1996), para 93.

<sup>113</sup> *Prosecutor v Kayishema and Ruzindana*, (n 18 above), para 109.

<sup>114</sup> As above, para 547. This was applied to instances in which the victim did not die as a result of the attack.

<sup>115</sup> *Prosecutor v Krstic* (n 38 above), paras 507-514; *Prosecutor v Blagojevic and Jokic*, (Case No. IT-02-60), Trial Chamber, Judgment, (17/1/2005), paras 644-654; *Prosecutor v Karadzic and Mladic*, n 112 above; *Attorney General of Israel v Adolf Eichmann*, (1968) 36 ILR 5 340, quoted in *Prosecutor v Akayesu*, (n 38 above), para 540: “[S]erious bodily and mental harm of members of the group could be caused by the starvation, deportation and persecution”.

<sup>116</sup> *Prosecutor v Akayesu*, as above, para 731; See also *The Prosecutor v Gacumbitsi* (Case No. ICTR-2001-64-T9, Trial Chamber, Judgment, (17/6/2004) (pending in the Appeals Chamber), paras 291-292 where the Trial Chamber concluded that rape constitutes serious bodily or mental harm; *Prosecutor v Kayishema and Ruzindana*, (n 113 above), para 108; *Prosecutor v Musema*, (n 33 above), para 156.

The acts committed constitute the physical harm to the victims. The harm need not be irremediable for acts to be genocide.<sup>117</sup> Mass killings in Darfur amount to causing serious bodily and mental harm to the member or members of the group or groups as such because the ICTR Trial Chamber has stated that “mass killings amounts to causing serious bodily and mental harm”.<sup>118</sup>

The Acting UN High Commissioner for Human Rights issued a report on 7 May 2004, in which he stated: “[I]t is clear that there is a reign of terror in Darfur...a pattern of attacks includes killing, rape...”.<sup>119</sup> The inflicting of strong fear or terror, intimidation or threat may amount to serious mental harm”.<sup>120</sup>

#### **2.6.4 Was there deliberate inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part?**

The International Commission of Inquiry on Darfur concluded that it “collected substantial and reliable material which tends to show... massive and deliberate infliction on those tribes of conditions of life bringing about their physical destruction in whole or in part, for example, by systematically destroying their villages and crops, by expelling them from their homes, and by looting their cattle”.<sup>121</sup>

The Commission stated that “[t]he Government of Sudan generally allows humanitarian organisations to help the population in camps by providing food, clean water, medicines and logistical assistance”.<sup>122</sup> It is argued that this was only possible after the international pressure exerted on the government.<sup>123</sup> The government impeded humanitarian access to the camps by suspending humanitarian activities for about a week, resulting in aid being cut

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<sup>117</sup> *Prosecutor v Akayesu*, (n 38 above), para 502-504; *Prosecutor v Rutaganda*, (n 33 above), para 51; *Prosecutor v Bagilishema*, (n 87 above), para 59; *Prosecutor v Gacumbitsi*, as above, para 291; *Prosecutor v Kayishema and Ruzindana*, as above, para 108; *Prosecutor v Musema*, as above; *Prosecutor v Semanza*, (n 60 above), paras 320-322.

<sup>118</sup> *Prosecutor v Kayishema and Ruzindana*, as above, para 547.

<sup>119</sup> Report of HCHR, (n 1 above), para 92.

<sup>120</sup> Submission by the Prosecutor in *Prosecutor v Kayishema and Ruzindana*, (n 18 above) para 110; compare *Prosecutor v Semanza*, (n 60 above), para 321.

<sup>121</sup> Report of ICID (n 1 above), paras 507, 518.

<sup>122</sup> As above, para 515.

<sup>123</sup> Communiqué of the Peace and Security Council of the AU, PSC/PR/Comm. (V), 5<sup>th</sup> session, Addis Ababa (13/4/2004) 2, para 4.



off for 30, 000 internally displaced persons,<sup>124</sup> who mostly come from the three Black African tribes. Human Rights Watch reported that:

Due to the restrictions on movement and continuing attacks by *Janjaweed* militias, many displaced civilians lack essential items such as shelter materials, adequate water, food and fuel for cooking. Even where food is available in local markets, displaced *Fur* and *Massalit* civilians are often unable to travel to those markets to purchase it.<sup>125</sup>

The African Commission Fact-Finding Mission in Darfur also reported that specialised agencies seeking to channel humanitarian assistance to the affected people were for many reasons, “facing enormous difficulties in doing so while famine and epidemic are on the increase in the region and that refugees and displaced persons were reportedly living in extremely difficult conditions with imminent arrival of the rainy season: little food, difficult access to drinking water, cold weather and makeshift shelter”.<sup>126</sup> International Crisis Group also reported that *Janjaweed* and Police in South Darfur State were holding the displaced and in fact “holding them hostage and deliberately starving them”.<sup>127</sup>

The above reports indicate that the *Fur* and *Massalit* were displaced from their homes, they were subjected to starvation due to lack of food, inadequate drinking water, and they were also put under conditions amounting to withholding sufficient living accommodation for a reasonable period. These are all circumstances which would lead to a slow death of the victims, for example, due to lack of proper housing, food, hygiene and medical care. The conditions imposed to the *Fur*, *Massalit*, and *Zaghawa*, do meet the interpretation of the crime of “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” under article II (c) of the Genocide Convention because it has been stated by the ICTR Trial Chamber that:

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part “includes circumstances which will lead to a slow death, for example, lack of proper housing, clothing, hygiene and medical care or excessive work or physical exertion” and ‘methods of destruction which do not immediately lead to the death of members of the group. The conditions of life envisaged include rape, the starving of a group of people, reducing required medical services below a minimum requirement, and withholding sufficient living accommodation for a reasonable period.<sup>128</sup>

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<sup>124</sup> See the concerns expressed in the Report of the Chairperson of the Commission on the Situation in the Darfur Region of the Sudan. Peace and Security Council of the AU, PSC/AHG/4 (XXIII), 23<sup>rd</sup> meeting, 10-11/1/2005, paras 31 & 32 (Report of the Chairperson of the Commission on the Situation in the Darfur).

<sup>125</sup> HRW Report, (n 1 above) 39.

<sup>126</sup> Report of the African Commission, (n 1 above), para 27.

<sup>127</sup> ICG Africa Report No. 80 (n 1 above) 2.

<sup>128</sup> *Prosecutor v Kayishema and Ruzindana*, (as n 18 above), paras 115 & 116; *Prosecutor v Akayesu*, (n 38 above), para 501, 505-506; Robinson, (n 87 above) 64.

Arguably, the obstruction of humanitarian aid was aimed at ‘starving the victims’ as a deliberate condition of life imposed calculated to bring about the physical destruction of the *Fur*, *Massalit*, and *Zaghawa* in part. It does not matter whether death was the end result of the imposed conditions. As was stated in *Eichmann case* that:

The offence of deliberately imposing conditions of life calculated to bring about the group’s destruction does not require proof of a result. The conditions of life must be calculated to bring about the destruction, but whether or not they succeed, even in part, is immaterial.<sup>129</sup>

### 2.6.5 Were measures intended to prevent births within the group imposed?

Neither the International Commission of Inquiry on Darfur nor the African Commission Fact-Finding Mission discussed the issue of imposing measures intended to prevent births within the group in Darfur. Probably, the two studies viewed this aspect as not being manifested in Darfur. Interestingly, some reports indicate that some women and men were subjected to such measures. Physicians for Human Rights noted that:

In dozens of interviews in different refugee camps, both men and women assert that rape is used by the *Janjaweed* as a measure of instilling terror among villagers, in order to force them to flee and a means of breaking family and community bonds for indefinite future thereafter. Concomitant with the shame of the act, the pregnancies which have resulted from these rapes have raised troubling questions of tradition and ethnicity for refugees. In another interview with the same source, a man recounted, “the *Janjaweed* and government soldiers killed people, raped the girls, they raped women of all ages, fifteen or adult women, some of the girls became pregnant”...All the men have been killed, who will marry these girls?<sup>130</sup>

Jamal Jafari expressed his view that “[t]he fact that 16% of those interviewed in the State Department report claim to have witnessed or experienced a rape is a disturbingly high number for a crime that has a history of being underreported. There are also reports of perpetrators telling victims that they are being raped to create ‘light’ babies--babies that appear Arab--so as to repopulate the area with Arabs instead of black Darfurians. In addition, there are numerous reports of men being targeted in Darfur, both to reduce the number of men of fighting age and to ensure they will not procreate, thereby reducing the non-Arab population”.<sup>131</sup>

Acts of raping and impregnating women belonging to the ethnic groups of *Zaghawa*, *Massalit* and *Fur* to create ‘light’ babies would certainly meet the interpretation of ‘imposing measures

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<sup>129</sup> *A-G of Israel v Eichmann*, (n 115 above), para 196.

<sup>130</sup> PHR Report, (n 1 above) 10 “consistent pattern of systematic rape of women”, citations omitted. However, reasonably, this statement needs specific intent to commit genocide. As it stands alone, it raises doubt as to whether there was intention.

<sup>131</sup> Jafari, n 55 above. However, the issue of procreation should always be read together with intent of perpetrators.

intended to prevent births within the group' under article II (d) of the Genocide Convention as was interpreted by the ICTR:

For purposes of interpreting Article 2(2) (d) of the Statute, the Chamber holds that the measures intended to prevent births within the group, should be construed as sexual mutilation, the practice of sterilization, forced birth control, separation of the sexes and prohibition of marriages. In patriarchal societies, where membership of a group is determined by the identity of the father, an example of a measure intended to prevent births within a group is the case *where, during rape, a woman of the said group is deliberately impregnated by a man of another group, with the intent to have her give birth to a child who will consequently not belong to its mother's group*. Furthermore, the Chamber notes that measures intended to prevent births within the group may be physical, but can also be mental. For instance, rape can be a measure intended to prevent births when the person raped refuses subsequently to procreate, in the same way that members of a group can be led, through threats or trauma, not to procreate.<sup>132</sup>

The ICTY Trial Chamber stated that “[s]ystematic rape of women...is in some cases intended to transmit a new ethnic identity to the child”.<sup>133</sup> Human Rights Watch documented reports showing that men aged ‘20-60’ were targeted.<sup>134</sup> The Congressional Research Services concluded that “men and young boys appear to have been particularly targeted in ground attacks”.<sup>135</sup>

Considering reports above, the acts committed by the government forces and *Janjaweed* amount to measures intended to prevent births within the group provided that there was intention. The selective deportation of certain parts of the group (i.e. all males or all females of child-bearing years) also qualifies as a measure to prevent births within the group.<sup>136</sup> To the extent that deportation, which in the process, might have resulted into “separation of sexes”, it is asserted that the situation in Darfur can be accommodated in the interpretation given by the ICTR Trial Chamber that ‘measures intended to prevent births within the group, should be construed as ‘separation of sexes...’.<sup>137</sup>

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<sup>132</sup> *Prosecutor v Akayesu*, (n 38 above), paras 507-508 (emphasis supplied); *Prosecutor v Kayishema and Ruzindana*, (n 18 above), para 117; *Prosecutor v Musema*, (n 33 above), para 158; *Prosecutor v Rutaganda*, (n 33 above), para 53. See J R W D Jones & S Powles (2003) *International criminal practice* 153. Of course, these acts, like all other acts, do not constitute genocide on their own, only if accompanied with the required mental element.

<sup>133</sup> *Prosecutor v Karadzic and Mladic*, n 112 above. On the enforced impregnation as genocide, see S K Fisher ‘Occupation of the womb: Forced impregnation as genocide’ (1996) 46 *Duke Law.J.* 91 91-133.

<sup>134</sup> HRW Report, (n 1 above) 22.

<sup>135</sup> CRS Report, (n 1 above) 4.

<sup>136</sup> Nersessian, (n 20 above) 259, quoting ILC Report 1996, (n 18 above), para 15, commentary to art 17; Report of ICID, (n 1 above), para 513, where the Commission admits killings of “selectively young men”.

<sup>137</sup> *Prosecutor v Akayesu*, n 132 above.

## 2.6.6 Was there forcible transfer of children from one group to another?

Neither the report of the International Commission of Inquiry on Darfur nor the African Fact-Finding Mission deals with this aspect. Other reports consulted also do not indicate any significant evidence to impute the forcible transfer of children or even adults from one group to another.<sup>138</sup> This matter is complicated as article II (e) of the Genocide Convention requires proof of result, namely that children be transferred from their group to the perpetrator's group. Intention would be to change the children from their acquired group by birth to a new group. It is argued that, any force that may be likely to have been exerted on the group, was probably meant to deport or displace victims but not necessarily with intent to transfer children from their group to another group. Although in the process of attacks there might have been separation of family members, this does not necessarily implicate forced transfer of children from one group to the other. The key indicator should be transferring children from 'one group to another', but not construing only 'forcible transfer' of children as such. The International Law Commission defined 'forcible transfer of children of the group to another group' as contained in article II (e) of the Genocide Convention as follows:

The forcible transfer of children would have particularly serious consequences for the future viability of a group as such. Although the present article does not extend to the transfer of adults, this type of transfer could constitute a crime against humanity...Moreover, the forcible transfer of members of a group, particularly when it involves the separation of family members, could also constitute genocide.<sup>139</sup>

## 2.7 Conclusion

This chapter has discussed acts of genocide and protected groups. It is concluded that the victims of attacks qualify as ethnic and racial groups. Victims belong to the *Zaghawa*, *Massalit* and *Fur* ethnic groups. They also belong to a black race. It is maintained that even if the attackers come from the same ethnic groups with the victims (a disputed fact in this study) and that there is inter-racial marriages between the victims and attackers' groups, this does not deny the possibility of having auto-genocide in Darfur. It is indicated that prohibited acts contained in article II (a) – (d) of the Genocide Convention were committed. However, there was no forcible transfer of children from one group to another as contained in article II (e). Acts enumerated in article II (a) - (d) would amount to genocide only if there is intention. It is a recognised position that not all enumerated acts in article II (a) - (e) need be committed for genocide to be committed. The International Law Commission has interpreted article II above and concluded that:

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<sup>138</sup> See reports cited in n 1 above.

<sup>139</sup> ILC Report 1996, (n 18 above), para 17 of commentary to art 17 'crime of genocide'.

[I]t is not necessary to achieve the final result of the destruction of a group in order for a crime to have been committed. It is enough to have committed any one of the acts listed in the article with the clear intention of bringing about the total or partial destruction of a protected group as such.<sup>140</sup>

The definition of genocide requires that the accused commit any of five punishable acts, of which 'killing' sits at the top of the list and is arguably the most serious provided that the killing is intentional.

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<sup>140</sup> ILC Report 1996, as above, para 18, commentary to art 17 'crime of genocide'; *Prosecutor v Akayesu*, (n 38 above), para 520: "the offender is culpable only when he has committed one of the offences charged under Article 2(2); *Prosecutor v Musema*, (n 33 above), para 164.

## CHAPTER 3

### INTENT TO COMMIT GENOCIDE

#### 3.1 Introduction

This chapter discusses the mental element of genocide in the Darfur conflict. It analyses facts on the conflict in relation to the law on genocide. It discusses the intention of the perpetrators of atrocities committed in Darfur. A critique on the findings of past studies is also posed. Finally, a conclusion on the issues discussed is made.

#### 3.2 Was there intent to commit genocide in Darfur?

Article II of the Genocide Convention includes a special intent requirement – that the act be committed “with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such”.<sup>141</sup> The intent must be to destroy the group in ‘whole or in part’, it is not necessary to intend to achieve the complete annihilation of a group; the intention must be to destroy one of the groups covered by the Convention, namely, a national, ethnic, racial or religious group; an action taken against individual members of the group is the means to achieve the ultimate criminal objective with respect to the group.<sup>142</sup> In ‘part’ requires the intention to destroy a considerable number of individuals who are part of the group<sup>143</sup> or a substantial part.<sup>144</sup>

On the mental element of genocide, the International Commission of Inquiry on Darfur concluded that the Government of Sudan did not pursue a policy of genocide.<sup>145</sup> However, the Commission admitted that “one should not rule out the possibility that in some instances single individuals, including Government officials, may entertain a genocidal intent, or in

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<sup>141</sup> *Prosecutor v Kambanda*, (n 26 above), para 497.

<sup>142</sup> ILC Report 1996, (n 18 above), paras 6-9, commentary to art 17 ‘crime of genocide’.

<sup>143</sup> *Prosecutor v Kayishema and Ruzindana*, n 18 above, paras 96-97; *Prosecutor v Bagilishema*, (n 87 above), para 64.

<sup>144</sup> *Prosecutor v Jelacic*, n 107 above; *Prosecutor v Sikirica and another*, n 107 above; *Prosecutor v Kristic*, n 107 above.

<sup>145</sup> Report of ICID, (n 1 above), paras 518 & 514.

other words, attack the victims with the specific intent of annihilating in part, a group perceived as a hostile ethnic group”.<sup>146</sup> The general conclusion on genocide is contested.

Arguably, the four physical elements of genocide are found in Darfur: there were acts of mass killings of members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring its physical destruction in part; and, imposing measures calculated to prevent births within the group. It has been identified that the victims belong to three ethnic groups of *Zaghawa*, *Massalit* and *Fur*.

Certainly, these acts manifest the intent to destroy members of the group as such because destruction takes a form of killing members of the group, causing serious bodily or mental harm, infliction of conditions calculated to bring physical destruction and imposition of measures intended to prevent births within the group.<sup>147</sup> Thus, it is the destruction of the group ‘in part’ because a considerable number of people belonging to such groups have been killed.<sup>148</sup> In ‘part’ requires the intention to destroy a considerable number of individuals who are part of the group.<sup>149</sup> Such killings reflect the means to achieve the ultimate criminal objective of destroying the groups ‘in whole or in part’.<sup>150</sup>

It is argued that *Janjaweed* and the government forces intended to kill the Black Africans in Darfur leaving the Arabs unharmed.<sup>151</sup> The government impeded humanitarian access to the camps by suspending humanitarian activities for a reasonable period, resulting in aid being cut off for 30, 000 internally displaced persons,<sup>152</sup> who mostly come from the three tribes of *Zaghawa*, *Massalit* and *Fur*. This alone would manifest intent on the government’s specific plan to destroy the groups in whole or in part by starving them thus, deliberately inflicting on

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<sup>146</sup> As above, para 520.

<sup>147</sup> The ICTR has described that “sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi as a group”. See, *Prosecutor v Akayesu*, n 38 above, para 731; *Prosecutor v Kayishema and Ruzindana*, n 18 above, para 95.

<sup>148</sup> Report of the African Commission, (n 1 above), para 25: “This conflict has resulted in the killing of an estimated 30,000 to 50,000 civilians”.

<sup>149</sup> *Prosecutor v Kayishema and Ruzindana*, n 143 above; *Prosecutor v Bagilishema*, n 143 above.

<sup>150</sup> This meets the criteria set in ILC Report 1996, n 142 above.

<sup>151</sup> See ICG Report No.80, (n 1 above) 1.

<sup>152</sup> Report of the Chairman of the Commission on the Situation in Darfur, n 124 above.

the group conditions of life calculated to bring about its physical destruction in whole or in part by subjecting them to a subsistence diet.<sup>153</sup>

Victims were subjected to systematic rape and sexual violence,<sup>154</sup> forced displacement, looting of their properties-their means of survival, selective killings of men aged 20-60 years and young boys, all of which were calculated to reducing the fighting age and of course, the non-Arab population in Darfur.<sup>155</sup>

The killing of men of fighting age is evidence to show that the perpetrators had requisite intent to destroy all Black Africans in Darfur, the protected group. The combination of those killings, with forced transfer of persons, systematic rape of women, looting, and forced starvation, would inevitably result in the physical disappearance of Black Africans in Darfur in part if not in whole. The group of men who were killed is protected, as this group constitutes a substantial part of the Black Africans in Darfur in general. As the ICTY reasoned that:

[T]he group of men was covered, as this group constituted a substantial part of the group of Bosnian Muslims in general. As regards the fact that only the Muslim men age in Srebrenica were targeted, and not the combination of those killings with the forced transfer of the women, children and elderly would inevitably result in the physical disappearance of the Bosnian Muslim population in Srebrenica.<sup>156</sup>

The fact that the acts were committed against the Black Africans would lead to a reasonable conclusion that even though there may not have been a public incitement to commit genocide on large scale, there has been intent to commit genocide by *Janjaweed* and the government forces. This shows how the Black Africans were victimised and specifically targeted, as a particular group, and the victims no doubt are members of the selected group as such. As the ICTR held that:

[I]n the opinion of the Chamber, all this proves that it was indeed a particular group, the Tutsi ethnic group, which was targeted...the victims were members of this selected group as such. The massacres which occurred in Rwanda had a specific objective, namely the extermination of the Tutsi, who were targeted. Genocide was indeed committed in Rwanda.<sup>157</sup>

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<sup>153</sup> Starvation or subjecting a group to a subsistence diet for a considerable period amount to deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, see, *Prosecutor v Akayesu*, (n 38 above), paras 501, 505-506.

<sup>154</sup> Report of the HCHR, n 119 above; HRW Report, n 111 above.

<sup>155</sup> HRW Report, n 134 above; CRS Report, n 135 above.

<sup>156</sup> *Prosecutor v Krstic*, (n 38 above), paras 80-84, indicating that an estimated 7000-8000 men were killed in Srebrenica in July 1995.

<sup>157</sup> *Prosecutor v Akayesu*, (n 38 above), paras 124-126.



### 3.3 Intent to commit genocide in Darfur can be inferred

The Commission of inquiry concluded that there was no government policy of genocide and that the intent of the attackers was not to destroy an ethnic group as such, or part of the group. Instead, the intention was to murder all those men they considered as rebels, as well as forcibly expel the whole population so as to vacate the villages and prevent rebels from hiding among, or getting support from, the local population. Arguably, even if there may not have been a specific intent to commit genocide in Darfur, which of course is disputed, such intent can still be inferred from the conduct of *Janjaweed* and the government forces mainly on the following grounds:

First, there were systematic attacks and killings targeting men and young boys of *Massalit*, *Zaghawa*, and *Fur* groups alone, sparing the Arab groups unharmed.<sup>158</sup> There were systematic acts of rape and sexual violence, causing serious bodily or mental harm to the women belonging to the above groups; looting of cattle, enforced starvation, forced displacement from their homes, burning of villages, crops and food storages, all of which amount to massive and deliberate infliction on the victims of conditions of life bringing about their physical destruction in whole or in part;<sup>159</sup> rape and sexual violence, separation of sexes and killing of men, constitute 'imposing measures intended to prevent births' in the above groups.<sup>160</sup> All the above represent a clear case of systematic and consistent conduct of both the *Janjaweed* and the government forces, leading to the commission of prohibited acts under article II (a) to (d) of the Genocide Convention. The jurisprudence of ICTR indicates that "[i]n practice, intent can be, on a case-by-case basis, inferred from the material evidence... including the evidence which demonstrates a consistent pattern of conduct by the accused".<sup>161</sup>

Second, the context of mass killings together with the actual conduct of the perpetrators show that there was intent to commit genocide in Darfur because of acts of targeting particular groups, selective killings, looting and forced deportation, and repeatedly raping and killing members of the same groups. Attacks were accompanied by derogatory words such

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<sup>158</sup> ICG Report, n 151 above.

<sup>159</sup> Report of ICID, (n 1 above), para 507.

<sup>160</sup> See part 2.6.5 above.

<sup>161</sup> *Prosecutor v Musema*, (n 33 above), para 167; *Prosecutor v Semanza*, (n 60 above), para 313: "A perpetrator's *mens rea* may be inferred from his actions"; *Prosecutor v Rutaganda*, (n 33 above), paras 61-63.

as 'blacks', "You are the mother of the people who are killing our people", "You are very cheap people", and "you have to be killed".<sup>162</sup> It has been held by the ICTR that:

Evidence of the context of the alleged culpable acts may help the Chamber to determine the intention of the accused especially where the intention is not clear from what that person says or does. The Chamber notes, however, that the use of context to determine the intent of an accused must be counterbalanced with the actual conduct of the accused. The Chamber is of the opinion that the accused's intent should be determined, above all, from his words and deeds, and should be evidenced from patterns of purposeful action.<sup>163</sup>

Third, the fact that the government forces clearly sided or associated with *Janjaweed* in the campaign of military attacks and mass killings, forced deportation, obstructing humanitarian aid to the victims, burning villages and looting properties belonging to the *Zaghawa*, *Massalit* and *Fur*, indicates that there was a specific plan between *Janjaweed* and the government forces to kill members belonging to the *Zaghawa*, *Massalit*, and *Fur* ethnic groups. The government forces recruited the *Janjaweed* to assist the government in the conflict. *Janjaweed* were acting with and on behalf of the government forces. They were so acting under the authority, with the support, complicity or tolerance of the Sudanese State authorities, and benefited from impunity for their actions. They operated closely with the government. They undertook attacks at the request of the State authorities, and sometimes also acting on their own initiative to undertake small-scale actions to loot property for personal gain.<sup>164</sup> Therefore, although a specific plan is not necessarily required, it is a clear evidence of intent to commit genocide on the part of *Janjaweed* and the government forces. The ICTR Trial Chamber held that:

Although a specific plan to destroy does not constitute an element of genocide, it would appear that it is not easy to carry out a genocide without such a plan, or organization...It is virtually impossible for the crime of genocide to be committed without some or indirect involvement on part of the State given the magnitude of this crime...It is unnecessary for an individual to have such knowledge of all details of genocidal plan or policy...The existence of such a genocidal plan would be strong evidence of the specific intent requirement for the crime of genocide. The Chamber concurs with this view.<sup>165</sup>

Fourth, there are several indicators of intent to commit genocide on the part of *Janjaweed* and the government forces. These are: the general context of the *Janjaweed* and the government forces, of systematically attacking and targeting members of the same ethnic group or racial group (the "Black Africans"-*Zaghawa*, *Massalit*, and *Fur*); these attacks were committed by none but *Janjaweed* and the government forces; the atrocities committed are horrific and committed on large scale; the nature of attacks generally in only villages inhabited by the Black Africans in Darfur; there was deliberately and systematically targeting

<sup>162</sup> Report of ICID, (n 1 above), paras 511, 519.

<sup>163</sup> *Prosecutor v Bagilishema*, (n 87 above), para 63. above.

<sup>164</sup> Report of ICID, (n 1 above) paras 106-108.

<sup>165</sup> *Prosecutor v Kayishema and Ruzindana*, (n 18 above), paras 94, 276. Proof of the genocidal intent of an organisation or a regime may be imputed to individuals closely associated with it. See *A-G of Israel v Eichmann*, (n 115 above) 228-35.

of victims on account of their membership to the ethnic groups of *Zaghawa, Massalit and Fur* while actually excluding the Arabs, and their villages unharmed; the political marginalisation of the Darfur region in terms of governance leading to the rise of the Darfur conflict; several repetitive attacks only on the Black Africans' villages; and that the perpetration of mass killings was aimed at destroying the Black Africans as a particular race or ethnic group as such, by forcibly deporting them from their homes and subjecting them to severe starvation for a considerable period, attacks on the refugee camps and actual attempted destruction of the Black Africans in Darfur. This shows inference of *Janjaweed* and government force's intent to commit genocide. It is recognised that all the above manifest intent to commit genocide. It was held by the ICTR Trial Chamber that:

On the issue of determining the offender's specific intent, the Chamber considers that intent is a mental factor which is difficult, even impossible, to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact. The Chamber considers that it is possible to deduce the genocidal intent inherent in a particular act charged from the general context of the perpetration of other culpable acts systematically directed against that same group, whether these acts were committed by the same offender or by others. Other factors, such as the scale of atrocities committed, their general nature, in a region or a country, or furthermore, the fact of deliberately and systematically targeting victims on account of their membership of a particular group, while excluding the members of other groups, can enable the Chamber to infer the genocidal intent of a particular act.<sup>166</sup>

Fifth, it is not necessary for acts of mass killings to spread throughout the whole region of Darfur for the intention to be imputed. Even parts of the villages that experienced the terrible attacks indicate the inference of intent on the part of the perpetrators. *Janjaweed* and the government forces were prevented from fulfilling their plan due to the international pressure from the international community exerted on the government to stop mass killings in Darfur. In other words, they had no enough opportunity to eliminate all 'Black Africans' in Darfur. If *Janjaweed* were not prevented from killing the Black Africans, what would remain in Darfur would survive in many cases only in biological sense, nothing more. It would be a community in despair clinging to memories. It would be a community that is a shadow of what it was. The government forces and *Janjaweed* could not have failed to know, by the time they decided to kill men in Darfur, that this selective destruction of the group would have a lasting impact upon the entire group. It has been held by the ICTY Trial Chamber that:

The historical examples of genocide also suggest that the area of the perpetrator's activity and control, as well as the possible extent of their reach, should be considered. Nazi Germany may have intended only to eliminate Jews within Europe alone; that ambition probably did not extend even at the light of its power, to an undertaking of that enterprise on a global scale. Similarly, the perpetrators of genocide in Rwanda did not seriously contemplate the elimination of the Tutsi population beyond the country's

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<sup>166</sup> *Prosecutor v Akayesu*, (n 38 above) paras 523-524; *Prosecutor v Kayishema and Ruzindana*, as above, paras 93, 527 The Chamber noted the following as relevant indicators of intent to commit genocide: "the number of group members affected", the use of derogatory language toward members of the targeted group", "the weapons employed and the extent of bodily injury", "the methodical way of planning", "the systematic manner of killing", and "the relative proportionate scale of the actual or attempted destruction of a group". See also *Prosecutor v Karadzic and Mladic*, (n 112 above), para 94.

borders. The intent to destroy formed by a perpetrator of genocide will always be limited by the opportunity presented to him.<sup>167</sup>

Sixth, the International Commission of Inquiry on Darfur stated that the perpetrators “selected 15 persons and killed them on the spot, they then sent all elderly men, all boys, many men and all women to a nearby village, where they held them for some time, whereas they executed 250 young villagers, who they asserted were rebels...that about 800 persons were not killed”. It concluded that clearly the intent was not to destroy an ethnic group.<sup>168</sup>

Arguably, the genocidal intent can be inferred even where there is no actual extermination of the entire group.<sup>169</sup> Genocide does not require proof that the perpetrator chose the most efficient method to accomplish his objective of destroying the targeted group. Even where the selected method will not implement the perpetrator’s intent to the fullest, leaving the destruction incomplete, this inefficiency does not preclude a finding of genocidal intent. The international attention focused on Darfur, altogether with the presence of the African Union Mission in Sudan (AMIS) in Darfur, prevented the government forces and *Janjaweed* who devised the genocidal plan from putting it into action in the most direct and effective way. Constrained by the circumstances, they adopted a method which would allow them to implement the genocidal design while minimizing the risk of retribution. To quote from the ICTY judgment:

In determining the genocidal intent, the cardinal question is whether the intent to commit genocide existed. While this intent must be supported by the factual matrix, the offence of genocide does not require proof that the perpetrator chose the most efficient method to accomplish his objective of destroying the targeted group. Even where the selected method will not implement the perpetrator’s intent to the fullest, leaving the destruction incomplete, this inefficiency does not preclude a finding of genocidal intent. The international attention focused on Srebrenica, combined with the presence of the UN Troops in the area, prevented those members of the VRS who devised the genocidal plan from putting it into action in the most direct and effective way. Constrained by the circumstances, they adopted a method which would allow them to implement the genocidal design while minimizing the risk of retribution...the genocidal intent may be inferred, among other facts, from the evidence of other culpable acts systematically directed against the same group.<sup>170</sup>

It is reasonable to expect a counter-argument that there was no direct and public incitement to commit genocide in Darfur; at least from the government side or that the individual perpetrators are not clearly identified. However, the absence of such statements is not

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<sup>167</sup> *Prosecutor v Krstic*, (n 38 above), para 12; *Prosecutor v Akayesu*, (as above), para 61: “In a case other than that of Rwanda, a person could be found guilty of genocide without necessarily having to establish that genocide had taken place throughout the country concerned”.

<sup>168</sup> Report of ICID, (n 1 above) paras 513-514.

<sup>169</sup> *Prosecutor v Akayesu*, (n 166 above), para 497: “Genocide does not imply the actual extermination of a group in its entirety, but this is underscored as such once any one of the acts mentioned in Article 2 (2) (a) through (e) is committed with the specific intent to destroy ‘in whole or in part’ a national, ethnical, racial or religious group”; *Prosecutor v Rutaganda*, (n 33 above), paras 48-49.

<sup>170</sup> *Prosecutor v Krstic*, (n 38 above), paras 32-33.

determinative. It has been decided that “[w]here direct evidence of genocidal intent is absent; the intent may still be inferred from the factual circumstances of the crime”.<sup>171</sup> The ICTY Trial Chamber held that:

The inference that a particular atrocity was motivated by genocidal intent may be drawn, moreover, even where the individuals to whom the intent is attributable are not precisely identified. If the crime committed satisfies the other requirements of genocide, and if the evidence supports the inference that the crime was motivated by the intent to destroy, in whole or in part, a protected group, a finding that genocide has occurred may be entered.<sup>172</sup>

In Darfur, the factual circumstances permit the inference that the killing of members of the *Zaghawa*, *Fur*, and *Massalit*, was done with genocidal intent. As already explained, the scale of the killings, combined with the government forces and *Janjaweed*'s awareness of the detrimental consequences it would have for the Black Africans of Darfur, and with the other actions the government forces and *Janjaweed* took to ensure the community's physical demise, is a sufficient factual basis for the finding of specific intent since the killing was engineered and supervised by members of the government forces.

### 3.4 Findings of past studies on Darfur: A critique

The International Commission of inquiry did not find on genocide, rather it mentioned that the government can be held responsible for murder and persecution as crimes against humanity. Extermination is also implicitly mentioned in the report although the Commission prefers the competent court to determine such crimes. The Commission also found on war crimes in Darfur. It stated that such crimes “may be no less serious and heinous than genocide”.<sup>173</sup> The same view is reflected in the UK Parliamentary report,<sup>174</sup> the African Commission Fact-Finding Mission on Darfur,<sup>175</sup> the Pan-African Parliament,<sup>176</sup> the AU and the Peace and Security Council of AU.<sup>177</sup> Human Rights Watch stated that the government “is responsible

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<sup>171</sup> As above, para 34; *Prosecutor v Rutaganda*, (Case No. ICTR-96-3), Appeals Chamber, Judgment, (26/5/2003) para 528. This situation is different from the clear genocidal hate speech in Rwanda which was part of the public incitement to commit genocide. On hate speech in the Rwanda genocide, see generally, F Viljoen 'Hate speech in Rwanda as a test case for international human rights law' (2005) XXXVIII *CILSA* 1 1-14; W A Schabas 'Hate speech in Rwanda: The road to genocide' (2000) *Mc Gill Law J.* 46 141-171; H L Gulseth (2004) *The use of propaganda in the Rwandan genocide: A study of Radio-Télévision Libre des Mille Collines (RTL)* 1-118.

<sup>172</sup> *Prosecutor v Krstic*, as above.

<sup>173</sup> Report of ICID, (n 1 above), paras 519, 521-522.

<sup>174</sup> UK Report, (n 1 above), para 2.

<sup>175</sup> African Commission Report, (n 1 above), para 124: “The attacks on civilians are war crimes and crimes against humanity”.

<sup>176</sup> Report of Pan-African Parliament, (n 1 above) 30.

<sup>177</sup> AU & PSC, n 2 above.

for ethnic cleansing” and crimes against humanity.<sup>178</sup> The above findings lead to one question: whether the finding in crimes against humanity would deny the possibility of a finding on genocide.

### 3.4.1 Does the finding on crimes against humanity deny the possibility of genocide?

On this issue, the International Commission of Inquiry on Darfur stated that “such international offences as crimes against humanity or large scale war crimes may be no less serious and heinous than genocide”.<sup>179</sup> This finding is debatable. Why is genocide in Darfur so stigmatised? Arguably, in popular opinion, genocide stands at the apex of international criminal law.<sup>180</sup> Such view has already been recognised by international criminal tribunals. In its judgments, the ICTR stated that “[r]egarding the crime of genocide...the Chamber is of the opinion that genocide constitutes the crime of crimes,”<sup>181</sup> thus, implying a sort of higher ranking. Although there is no express hierarchical order, the ICTR statute for example, places genocide before crimes against humanity.<sup>182</sup> A similar purpose is served by the full name of the ICTR.<sup>183</sup> However, the tribunals have again opined that the three crimes stand on equal footing.<sup>184</sup>

In *Semanza case*, Judge Dolenc introduced three principles as tools for applying the test less mechanically, viz. the principle of consumption, the principle of subsidiarity and the principle of inclusion. The principle of consumption “refers to relationship of offences of the same kind, but differing significantly in gravity, that are designed to protect the same or closely related social interests, but which differ in relation to particular elements”. Pursuant to the principle of subsidiarity “a less authoritative or ‘inferior’ criminalisation only applies when the competing ‘superior’ criminalisation is not applicable”. Finally, the principle of inclusion

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<sup>178</sup> HRW Report, (n 1 above) 1.

<sup>179</sup> Report of ICID, (n 1above), para 522.

<sup>180</sup> Van den Herik, (n 20 above) 225.

<sup>181</sup> *Prosecutor v Kambanda*, (n 26 above) & para 14 (war crimes are considered lesser crimes than genocide); *Prosecutor v Serushago*, (n 26 above), para 15; *Prosecutor v Akayesu*, ( n 38 above), para 8; *Prosecutor v Musema*, (n 33 above), para 981.

<sup>182</sup> Statute of ICTR, (n 18 above), art 2 “genocide” & art 3 “crimes against humanity”. In contrast, the ICTY Statute places genocide in art 4, after war crimes.

<sup>183</sup> “The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states, between 1/1/1994 and 31/12/1994”.

<sup>184</sup> *Prosecutor v Akayesu*, n 38 above, para 470; *Prosecutor v Semanza*, (n 60 above), para 555; *Prosecutor v Tadic*, (Case No. IT-94-1 A) Appeals Judgment, (26/1/2000). Separate opinion of Judge Cassese, para 7. However, those views do not address the overlap that may exist between extermination as a crime against humanity and genocide either.

regulates the situation in which “an accused’s conduct violates two or more substantially different criminalisations, but where it would be unreasonable to pronounce cumulative convictions because of the insignificance of the lesser crime”. On the basis of these principles, Judge Dolenc argued that there was a certain hierarchy between the three crimes, and that genocide was more specific than crimes against humanity and war crimes, and that crime against humanity were more specific than war crimes.<sup>185</sup> Despite these dissenting voices, prevailing case law is that the three crimes co-exist.<sup>186</sup>

Schabas argues that if a crime is considered less serious than another that means it is in some way trivialised or overlooked. But in any hierarchy, something must sit at the top. The crime of genocide belongs at the apex of the pyramid. It is the crime of crimes.<sup>187</sup> This study agrees with this view. The alleged gap between crimes against humanity and genocide has narrowed considerably. This makes the debate about the distinction between the two, in terms of the stigma the two categories involve, all the more significant. The practical consequence of the distinction is now less important.

Arguably, although each crime has a materially distinct element that is not included in the definition of the other, in certain circumstances, there is a correspondence of the definition of crimes against humanity and genocide.<sup>188</sup> Extermination for example, is a crime against humanity but also most resembles genocide. The two crimes sometimes overlap. In Darfur, murder, rape and extermination<sup>189</sup> overlap as elements of genocide and crimes against humanity. Therefore, the facts leading to a finding on crimes against humanity could also be applied on genocide. Arguably, the two crimes are generally complementary to each other. It is permissible to find on two distinct crimes based on the same facts. Therefore, the past studies should have found on genocide as well. The ICTR Appeals Chamber concluded that multiple convictions for genocide and extermination as a crime against humanity are permissible.<sup>190</sup> The Chamber also held that:

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<sup>185</sup> *Prosecutor v Semanza*, as above, Separate and Dissenting Opinion of Judge Dolenc, (15/5/2003), paras 23-28.

<sup>186</sup> van den Herik, (n 20 above) 253.

<sup>187</sup> Schabas, (n 36 above) 9.

<sup>188</sup> “The statutory definition of crimes against humanity requires proof that the crime be committed as part of a widespread or systematic attack against a civilian population whereas genocide requires proof of an intent to destroy, in whole or in part, a national, ethnical, racial or religious group”, see *Prosecutor v Musema*, (n 33 above) Appeals Chamber, Judgment, (16/11/2001), paras 361-369.

<sup>189</sup> Art 7(2) (b) Rome Statute defines extermination as a crime against humanity to include “the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population”. Compare this with the definition given under genocide on “deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”,

<sup>190</sup> *Prosecutor v Musema*, n 188 above.

It is well-established that an accused may be charged with more than one criminal offence arising out of a single incident. Multiple criminal convictions for different offences, but based on the same conduct are permissible if each offence has a materially distinct element not contained in the other. The Defence argues that there is a complete overlapping of offences between genocide and extermination as a crime against humanity. It also argues that there is a complete overlap in the element required for conviction on the charges of genocide and murder as a crime against humanity.<sup>191</sup>

The ICTR experience shows that the accused were charged with crimes against humanity as well as genocide. In situations other than Rwanda, crimes against humanity could certainly serve as alternative basis for conviction in case genocide could not be proved. Even in a clear-cut situation of genocide, as was the case in Rwanda, other crime definitions are certainly necessary in order to describe the whole situation and cover all the crimes committed. In the Darfur conflict, genocide could also be established to describe all crimes. From this perspective, genocide and crimes against humanity are two co-existing crimes, which may seem to overlap in certain specific circumstances, but which each has its own value.<sup>192</sup>

### 3.5 Conclusion

Specific intent to commit genocide in Darfur has been inferred from the conduct of the government forces and *Janjaweed*, such as systematic attacks and killings of members of the three ethnic groups, rape and sexual violence, forced displacement and obstruction of the humanitarian aid. These indicate specific intent to destroy 'in part' the three ethnic groups. A critical study on the findings of past studies concludes that Darfur presents a clear picture of genocide, war crimes and crimes against humanity.

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<sup>191</sup> *Prosecutor v Ndindabahizi*, (Case No. ICTR-01-71-I), Appeals Chamber, Judgment, (15/7/2004), paras 491-493. In paras 494-495, the verdict shows multiple convictions of genocide, extermination and murder as crimes against humanity. *Prosecutor v Semanza*, (n 60 above), para 409; *Prosecutor v Kunarac*, (Case No. IT-96-23 & 23/1), ICTY Appeals Chamber, Judgment, (12/6/2002), paras 173-178.

<sup>192</sup> On Crimes against humanity and genocide, see van den Herik, (n 20 above) 244-259; D Luban 'A theory of crimes against humanity' (2004) 29 *The Yale J. Int. Law* 1 85-161; G Robertson (2000) *Crimes against humanity* 203-243; Schabas, (n 36 above) 9-12.



## CHAPTER 4

### CONCLUSION AND RECOMMENDATIONS

#### 4.1 Findings

In this study the central focus has been whether genocide was committed in Darfur. Elements of genocide have been discussed.<sup>193</sup> On the basis of the facts and legal authorities consulted in each element, it is concluded that genocide was committed in Darfur. It is concluded that members of the *Zaghawa*, *Massalit* and *Fur* tribes meet the definition of the ethnic groups on the ground that tribal groups are considered ethnic groups under the Genocide Convention.<sup>194</sup> Victims of attacks belong to the black race on the ground of colour, thus qualifying as a racial group under the Genocide Convention.<sup>195</sup> However, the victims do not qualify as national or religious groups on the grounds that both perpetrators and victims of attacks embrace Islamic religion and belong to the same national group.<sup>196</sup>

Acts enumerated in article II (a) – (d) of the Genocide Convention materialised in Darfur. However, there was no forcible transfer of children from one group to another. This should not be taken to affect the above conclusion that genocide was committed. It is maintained that not all enumerated acts in article II (a)-(e) of the Genocide Convention need be committed for it to be genocide. It is enough to have committed any one of the five acts listed in the article with clear intention of bringing about the total or partial destruction of a protected group as such.<sup>197</sup> The perpetrators had requisite intent to destroy the Black Africans in Darfur. Intent to commit genocide is inferred from the context and actual conduct of the perpetrators. Therefore, the hypothesis is proven that genocide was committed in Darfur.

Stages of genocide have been met in Darfur.<sup>198</sup> There is a classification of groups of people in subjective terms. This is indicated by victims perceiving themselves as distinct groups from that of *Janjaweed*, thus making “us and them”; all acts of mass killings, systematic rape and forced displacement signify dehumanisation; attacks on victims were organised by the government forces by arming *Janjaweed* who acted under the state authority, thus meeting

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<sup>193</sup> See ch. 2 & 3 above.

<sup>194</sup> ILC Report 1996, n 51 above; Schabas, n 50 above.

<sup>195</sup> See n 79 & 82 above.

<sup>196</sup> See n 70 & 71 above.

<sup>197</sup> ILC Report 1996, n 140 above.

<sup>198</sup> On stages of genocide, see Stanton, n 34 above.

the criteria set that genocide is always organised, special army units or militias are often trained and armed. There was ethnic polarisation accompanied by use of derogatory words indicating abhorrence and racial slur; identification – victims of attacks in Darfur were identified and separated out because of their ethnic and racial identities; extermination is manifested in a form of destruction of the groups by forced transfer, mass killings of members of the Black Africans. Finally, perpetrators denied that they committed genocide.<sup>199</sup>

A critical study of the findings of past studies on Darfur concludes that the Darfur conflict presents a clear picture of genocide, war crimes and crimes against humanity. In Darfur, rape, mass killings and extermination overlap as elements of both crimes against humanity and genocide.<sup>200</sup> Therefore, facts leading to crimes against humanity should have also been used by the past studies to conclude on genocide.

Although state obligations under the Genocide Convention has not been the central focus of this study *per se*, it is not fatal to conclude that on the above circumstances that show how the government forces sided with *Janjaweed* to commit acts that amount to genocide, and that the *Janjaweed* acted in complicity or tolerance of, and under the State authority, being armed by the government to commit such acts, the Government of Sudan breached its obligation under the Genocide Convention.<sup>201</sup>

## 4.2 Recommendations

Having concluded that genocide was committed in Darfur, and considering the fact that the situation in Darfur has been referred to the Prosecutor of the International Criminal Court (ICC),<sup>202</sup> this study recommends as stated below. However, it should be noted that the recommendations contained below are not meant to prejudice the role of the Prosecutor of the ICC.<sup>203</sup>

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<sup>199</sup> The government stated that there has been no policy of ethnic cleansing, see Report of the Pan-African Parliament, (n 1 above) 20; Statement of the Government of Sudan to the 61<sup>st</sup> session of UN Commission on Human Rights, Text of Statement by Ali Osman Yassin, Sudanese Minister of Justice, Head of the Sudan Delegation to 61<sup>st</sup> annual session of the Commission on Human Rights in Geneva, on 14 March 2005: "Mr. Chairman...there has been no genocide in Darfur", Sudan Tribune, Wednesday, 16/3/2005, available at <<http://www.sudantribune.com/article.php3?idarticle=8552>> (accessed 7/10/2005).

<sup>200</sup> See n 188 & 189 above.

<sup>201</sup> Article I, Genocide Convention. Sudan acceded to the Genocide Convention on 13/10/2003. The Convention entered into force for the Sudan on 11/1/2004, C.N 1204.2003.TREATIES-1, available at <<http://untreaty.un.org>> (accessed 7/10/ 2005).

<sup>202</sup> S/RES/1593 (2005).

<sup>203</sup> The Prosecutor has opened investigation in Darfur. See 'Prosecutor of the ICC opens investigations in Darfur' available at <[http://www.icc-cpi.int/pressrelease\\_details&id=107.html](http://www.icc-cpi.int/pressrelease_details&id=107.html)> (accessed 7/10/2005).

On genocide, it is recommended that members of the Sudan government forces and *Janjaweed* be held responsible for genocide in Darfur. On the basis of the evidence and legal authorities available, the Prosecutor of the ICC should include the crime of genocide in the upcoming investigations and indictments of perpetrators of the atrocities in Darfur because there is a significant amount of credible information disclosing the commission of genocide which is within the jurisdiction of the ICC.<sup>204</sup> The requirements for genocide are satisfied in Darfur. Material elements of genocide falling under article II (a)-(d) of the Genocide Convention are met. The specific intent to commit genocide is clear by inference on the conduct of the perpetrators. Stages of genocide are met. Therefore, the law must not shy away from referring the crime committed in Darfur by its rightful name 'genocide'.<sup>205</sup>

Some of the perpetrators should be prosecuted for complicity in genocide<sup>206</sup> because the government forces sided with the *Janjaweed* who acted under authority, with the support, complicity or tolerance of the Sudanese State authorities, and benefited from impunity for their actions. The government forces armed the *Janjaweed* with weapons and *Janjaweed* undertook attacks at the request of the state authorities. Thus, by procuring weapons, knowingly aiding or assisting, instigating or encouraging the commission of genocide by arming the *Janjaweed*, members of the government forces should be held responsible for acting in complicity in genocide. It should be noted that complicity in genocide does not require genocide's special intent.

Members of the government forces and *Janjaweed* should be persons who bear the greatest responsibility for the crimes committed in Darfur. Together, they committed genocide and other violations of the law of war. In the Darfur context, it is recommended that the ICC should adopt a working definition on the concept of persons who bear the greatest responsibility for the crimes committed in Darfur to be those leaders who, in committing such crimes, were or could be characterised as the highest-level commanders in the Sudanese government army and *Janjaweed* militias. Persons bearing the greatest responsibility should also be interpreted to mean and include those masterminds of the killings, those who caused

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<sup>204</sup> Art 6 of the Rome statute gives jurisdiction on genocide. It should be noted that the Prosecutor of the ICC has stated that there is credible information on the commission of grave crimes in Darfur. See, Report of the Prosecutor of the ICC to the Security Council, Pursuant to UN Security Council Resolution 1593 (2005) 2.

<sup>205</sup> As was the reasoning in *Prosecutor v Krstic*, (Case No. IT-98-33-T), Judgment, Appeals Chamber, (19/4/2004), para 37.

<sup>206</sup> The same person cannot be convicted of genocide and complicity in genocide regarding the same act, see *Prosecutor v Akayesu*, n 38 above, para 532; Complicity can only exist when there is a punishable, principal act, in the commission of which the accomplice has associated himself. For an accused to be found guilty of complicity of genocide, it must, first of all, be proven that the crime of genocide has, indeed, been committed. See paras 527-531.

and sustained the war, or those who ultimately bear the greatest responsibility.<sup>207</sup> The test for determination should be a very high one that goes beyond the doctrines of command and superior responsibility. The mandate of those who bear the greatest responsibility should also be interpreted to include other perpetrators, who, while not at the top of the chain of command, were regional or mid-level commanders who stood out above similarly ranking colleagues for the exceedingly brutal nature of the crimes they committed that terrorised the civilian populations in Darfur.

There should be prosecution of perpetrators on individual responsibility and joint criminal enterprise.<sup>208</sup> By procuring weapons, knowingly aiding or assisting, instigating or encouraging the commission of genocide by arming the *Janjaweed*, members of the government forces should be held responsible for acting in concert or common plan with the *Janjaweed* to commit genocide in Darfur. This signifies how members of the armed forces planned, instigated, committed or otherwise aided and abetted in the planning, preparation or execution of the crime of genocide.

Although Sudan is not a party to the Rome Statute, it should cooperate with the Prosecutor of the ICC and provide necessary assistance to the court pursuant to resolution 1593 (2005). Other States non-parties to the Rome Statute should also provide full cooperation to the court and the Prosecutor in dealing with the situation in Darfur.<sup>209</sup>

**17993 words- (ch.1-4), excluding bibliography and appendices.**

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<sup>207</sup> This concept has been applied by the Prosecutor of the Special Court for Sierra Leone in the indictments. See, *Prosecutor v Hinga Norman and 2 others*, Case No. SCSL-03-14-I, (5/2/2004); *Prosecutor v Tamba Barima and 2 others*, Case No. SCSL-2004-16-PT, (18/2/2005); *Prosecutor v Hassan Sessay and 2 others*, Case No.SCSL-2004-15-PT, (13/5/2004). On those who bear the greatest responsibility, see generally, C Bhoke & B Dawit (2005) 'The concepts of joint criminal enterprise and those who bear the greatest responsibility' (unpublished paper), 16-19.

<sup>208</sup> The concept of joint criminal enterprise is implicitly stated in art 25 (3) of the Rome Statute; art 6(1) of the Statute of the Special Court for Sierra Leone; art 7(1) of the Statute of the ICTY; art 6(1) of the ICTR Statute.

<sup>209</sup> Obligation is derived from art I of the Genocide Convention to which Sudan is a Contracting Party. Customary international law also obliges states to cooperate in the punishment of the crime of genocide, see ch.2. State parties to the Rome Statute are also reminded of their obligation to cooperate with the Prosecutor and the ICC, see art 86-99, Rome Statute.

## BIBLIOGRAPHY

### Books and chapters in books

Bassiouni, M C (1992) *Crimes against humanity in international law* Dordrecht: Martinus Nijhoff Publishers.

Centre for Human Rights (CHR) (2001) *International Yearbook of Regional Human Rights, Masters Programme*. A publication of the Centre for Human Rights, University of Pretoria.

Cissé, C 'The end of a culture of impunity in Rwanda? Prosecution of genocide and war crimes before Rwandan Courts and the International Criminal Tribunal for Rwanda' in Fischer, H (1998) 1 *Yearbook of international humanitarian law*, The Hague: TMC. Asser Press.

Dinstein, Y and Tabory, M (Eds), (1996) *War Crimes in International Law* The Hague: Martinus Nijhoff Publishers.

Dugard, J (2000) *International law: A South African perspective*: Cape Town: Juta and Company Ltd.

Fischer, H (ed), (2000) *Yearbook of international humanitarian law* The Hague: TMC Asser Press.

Gulseth, H L (2004) *The use of propaganda in the Rwandan genocide: A study of Radio-Télévision Libre des Mille Collines (RTLM)*, Thesis, Cand.polit.degree, University of Oslo.

Hawk, D 'The Cambodian Genocide' in Charney, W I (ed.) (1988) *Genocide: A bibliographic review* New York: Facts on file Publications.

Hirsh, D (2003) *Law against genocide: Cosmopolitan Trials* London: Glasshouse Press.

Human Rights Watch (2004) *Genocide, War Crimes, and Crimes against Humanity: Topical Digests of Case Law of the ICTR and ICTY* New York: Human Rights Watch.

Jones R W D (2000) *The practice of international Criminal Tribunals for the Former Yugoslavia and Rwanda* (2nd edn.) New York: Transnational Publishers.

Jones, J R W D & S Powles, S (2003) *International criminal practice*, (3<sup>rd</sup> edn.) Ardsley: Transnational Publishers, Inc.

Kiernan, B 'The Cambodian Genocide, 1975-1979' in Totten, S & others (eds.), (1995) *Genocide in the Twentieth Century* New York: Garland Publishing.

Kuper, L (1981) *Genocide, its Political use in the Twentieth Century* New Haven: Yale University Press.

Lemkin, R (1944) *Axis rule in Occupied Europe: Laws of occupation, analysis of government, Proposals for redress* Washington: Carnegie Endowment for World Peace: Division of International law Publications.

Magnarella, P.J (2000) *Justice in Africa: Rwanda's Genocide, Its Courts and the UN Criminal Tribunal* Aldershot: Ashgate Publishing Company.

McCormack, T.L.H (ed), (1997) *The Law of War Crimes: National and International Approaches* The Hague: Kluwer Law International.

Osaghe, E H 'Ethnicity in Africa or African Ethnicity' in Himmelstrand, U, Kinyanjui, K and Mburugu, E (1994) *African Perspectives on Development* Nairobi: East Africa Publishers.

Ratner, S R & Abrams, J S (1997) *Accountability for Human rights atrocities in international law: Beyond the Nuremberg legacy* Oxford: Oxford University Press.

Robertson, G (2000) *Crimes against humanity* Victoria: Penguin Books Australia Ltd.

Robinson, N (1960) *The Genocide Convention: A commentary* New York: World Jewish Congress.

Schabas, W A (2000) *Genocide in international law: The crimes of crimes* Cambridge: Cambridge University Press.

Schabas, W A 'Development in the law of genocide' in Fischer, H & McDonald, A (eds.), (2002) *5 Yearbook of international humanitarian law* The Hague: T.M.C Publishers.

Shaw, M N 'Genocide and International Law' in Dinstein, Y (ed.), (1989) *International law at a time of perplexity (Essays in Honour of Shabtai Rosenne)* Dordrecht: Martinus Nijhoff.

Shawcross, W 'Persecutions on political, racial, or religious grounds' in Gutman, R & Rieff, D (eds.), (1999) *Crimes of war, What the public should know* New York: Norton.

Shibutan, T & Kwan, K M (1965) *Ethnic stratification: A comparative approach* London: McMillan.

Sithole, M 'Is Multi-Party Democracy Possible in Multi-Ethnic African State?' in Himmelstrand, U, Kinyanjui, K and Mburugu, E (1994) *African perspectives on development* Nairobi: East Africa Publishers.

Sunga, L S (1997) *The emerging system of international criminal law: Developments in codifications and implementation* The Hague: Kluwer Law International.

Van den Herik, L J (2005) *The contribution of the Rwanda Tribunal to the development of international law* Amsterdam: (PhD Thesis) Vrije Universiteit.

### **Articles and Journals**

Beres, L R 'International law: Personhood and the prevention of genocide' (1989) 1 *Loyola of Los Angeles international and Comparative Law Journal* 1.

Bruun, L L 'Beyond the 1948 Convention- Emerging principles of genocide in customary international law' (1993) 17 *Maryland Journal of International Law and Trade* 193.

Burkhalter, H 'Preventing genocide and crimes against humanity' (2004) 98 *American Society of International Law Proceedings* 41.

- Danner, A M 'Joint criminal enterprise and contemporary international law' (2004) 98 *American Society of International Law Proceedings* 186.
- Danner, D J and Martinez, J S 'Guilty associations: Joint criminal enterprise, command responsibility, and the development of international criminal law' (2005) 93 *California Law Review* 75.
- Duffy, T 'Towards a culture of Human Rights in Cambodia' (1983) 16 *Human Rights Quarterly* 82.
- Ferencz, B 'Genocide: The Convention, Domestic laws, and State responsibility' (1989) *American Society of International Law Proceedings* 314.
- Fisher, S K 'Occupation of the womb: Forced impregnation as genocide' (1996) 46 *Duke Law Journal* 91
- Hannum, H 'International law and Cambodian Genocide: The sounds of silence' (1989) 11 *Human Rights Quarterly* 82.
- Igiri, C.O and Lyman, P.N "Giving Meaning to 'Never Again' Seeking an Effective Response to the Crisis in Darfur and Beyond" Council on Foreign Relations, September 2004, available at <www.cfr.org> (accessed 12/7/2005).
- Jafari, J "‘Never Again’, Again: Darfur, the Genocide Convention, and the duty to prevent genocide" (2004) 12 *Human Rights Brief* 1.
- Karagiannakis, M 'The definition of rape and its characterisation as an act of genocide – A review of the jurisprudence of the international Criminal Tribunals for Rwanda and the Former Yugoslavia' (1999) 12 *Leiden Journal of International Law* 479.
- Kunz, J 'The United Nations Convention on Genocide' (1949) 43 *American Journal of International Law* 739.
- Lippman, M (1994) 'The 1948 Convention on the Prevention and Punishment of the Crime of Genocide: Forty Five Years Later' (1994) 8 *Temple International and Comparative Law Journal* 1.
- Lippman, M 'Genocide: The crime of the century. The jurisprudence of the death at the dawn of the New Millennium' (2001) 23 *Houston Journal of International Law* 467.
- Luban, D 'A theory of crimes against humanity' (2004) 29 *The Yale Journal of International Law* 1.
- Manashaw, L D 'Genocide and Ethnic cleansing: Why the distinction? A discussion in the context of atrocities occurring in Sudan' (2005) 35 *California West International Law Journal* 303.
- Meron, T 'The Case for War crimes Trials in Yugoslavia' (1993) *Foreign Affairs* 1.
- Miller, A A 'From the International Criminal Tribunal for Rwanda to the International Criminal Court: Expanding the definition of genocide to include rape' (2003) 108 *Pennsylvania State Law Review* 349.
- Morton, J S 'The international legal definition of the crime of genocide' (2001) 7 *ILSA International and Comparative Law* 329.

- Mundis, D A and Gayner, F 'Current developments at the Ad hoc international Criminal Tribunals' (2005) 3 *Journal of International Criminal Justice* 268.
- Nersessian, D L 'The troubling contours of genocidal intent: Troubling jurisprudence from the International Criminal Tribunals' (2002) 37 *Texas International Law Journal* 231.
- Odora, A.O "Complicity in Genocide as understood through the ICTR experience" (2002) 22 *International Criminal Law Review* 375.
- Osuji, C.E "Complicity in Genocide versus 'Aiding and Abetting Genocide'" (2005) 3 *Journal of International Criminal Justice* 56.
- Piacente, N 'Importance of the joint criminal enterprise doctrine for the ICTY Prosecutory policy' (2004) 2 *Journal of International Justice* 446.
- Powels, S 'Criminal liability by Prosecutorial ingenuity and judicial creativity?' (2004) 20 *Journal of International Criminal Justice* 606.
- Schabas W A 'The Genocide Convention at fifty' (1999) United States Institute of Peace, Special Report 41.
- Schabas, W A 'Hate speech in Rwanda: The road to genocide' (2000) *Mc Gill Law Journal* 46.
- Schabas, W A 'Problems of international codifications— Were the atrocities in Cambodia and Kosovo genocide?' (2001) 35 *New England Law Review* 287.
- Schabas, W A 'Was genocide committed in Bosnia and Herzegovina? First judgments of the International Criminal Tribunal for the Former Yugoslavia' (2001) 25 *Fordham International Law Journal* 23.
- Seawell, P D 'Rape as a social contrast: A comparative analysis of rape in the Bosnian and Rwandan Genocide and US domestic law' (2004-2005) 18 *National Black Law Journal* 180.
- Southwick, K G 'Srebrenica as genocide? The Kristic decision and the language of the unspokenable' (2005) 8 *Yale Human Rights and Development Law Journal* 188.
- Stanton, G 'Stages of genocide', <<http://www.genocidewatch.org/eightstages.htm>> (accessed 7/5/2005).
- Starkman, P 'Genocide and international law: Is there a cause of action?' (1984) 8 *Association of Student International Law Societies International Law Journal* 1.
- Steven, L A 'Genocide and the duty to extradite or prosecute: Why the US is in breach of its international obligations' (1999) 39 *Virginia Journal of International Law* 1.
- Toufayan, M 'The World Court's distress when facing genocide: A critical commentary on the application of the Genocide Convention Case (Bosnia and Herzegovina v Yugoslavia (Serbia and Montenegro))' (2005) 40 *Texas International Law Journal* 233.
- Van der Vyeveer, J D 'Prosecution and punishment of the crime of genocide' (1999) 23 *Fordham International Law Journal* 286.
- Van Schaack, B 'Darfur and the rhetoric of genocide' (2005) 26 *Whittier Law Review* 1101.



Viljoen, F 'Hate speech in Rwanda as a test case for international human rights law' (2005) XXXVIII *Comparative International Law Journal of Southern Africa* 1.

Webb, J 'Genocide treaty: Ethnic cleansing, substantive and procedural hurdles in the application of the Genocide Convention to alleged crimes in the Former Yugoslavia' (1993) 23 *Georgia Journal of International and Comparative Law* 2.

Werle, G and Jessberger, F "Unless Otherwise Provided: Article 30 of the ICC statute and the Mental Element of Crimes under International Law" (2005) 3 *Journal of International Criminal Justice* 35.

## **Case law**

*Attorney General of Israel v Adolf Eichmann*, (1968) 36 *International Law Reports* 5.

*Case Concerning Barcelona Traction, Light and Power Company (Second Phase)*, (*Belgium v Spain*), ICJ Judgments and Report (2/2/1970).

*Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina v Yugoslavia)*, Preliminary Objections, ICJ Judgment and Reports (11/7/1996).

*Case Concerning Application of the Genocide Convention, (Bosnia and Herzegovina v Yugoslavia (Serbia and Montenegro))*, ICJ Reports and Judgment (13/9/1993), (Separate opinion of *Ad hoc* Judge Lauterpacht).

*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ Opinion (28/5/1951).

*Prosecutor v Tadic*, (Case No. IT-94-1 A), Appeals Chamber, Appeals Judgment, (26/1/2000).

*Prosecutor v Kunarac*, (Case No. IT-96-23 & 23/1), ICTY Appeals Chamber, Judgment, (12/6/2002).

*Prosecutor v Krstic*, (Case No. IT-98-33-T) Trial Chamber, Judgment, (2/8/2001).

*Prosecutor v Krstic*, (Case No. IT-98-33-T), Appeals Chamber, Judgment (19/4/2004).

*Prosecutor v Karadzic and Mladic*, (Case Nos. IT-95-5-R61, IT-95-18-R61), Consideration of the Indictment within the Framework of Rule 61 of the Rules of Procedure and Evidence, (11/7/1996).

*Prosecutor v Blagojevic and Jokic*, (Case No. IT-02-60), Trial Chamber, Judgment, (17/1/2005)

*Prosecutor v Hinga Norman and 2 others*, Case No. SCSL-03-14-I, (5/2/2004).

*Prosecutor v Tamba Barima and 2 others*, Case No. SCSL-2004-16-PT, (18/2/2005).

*Prosecutor v Hassan Sessay and 2 others*, Case No. SCSL-2004-15-PT, (13/5/2004).

*Prosecutor v Goran Jelusic*, (Case No. IT-95-10) Trial Chamber, Judgment, (14/12/1999).

*Prosecutor v Akayesu*, (Case No. ICTR -96-4-T), Trial Chamber, Judgment, (2/9/1998).

*Prosecutor v Kayishema and Ruzindana*, (Case No. ICTR-95-1-T), Trial Chamber, Judgment, (21/5/1999).

*Prosecutor v Kambanda* (Case No. ICTR-97-23-S), Trial Chamber, Judgment and Sentence, (4/9/1998).

*Prosecutor v Musema*, (Case No. ICTR-96-13-A), Trial Chamber, (27/1/2000).

*Prosecutor v Musema*, (Case No. ICTR-96-13-A), Appeals Chamber, Judgment, (16/11/2001).

*Prosecutor v Nindabahizi*, (Case No. ICTR-01-71-I), Appeals Chamber, Judgment, (15/7/2004).

*Prosecutor v Rutaganda*, (Case No. ICTR-96-3). Trial Chamber, (6/12/1999).

*Prosecutor v Rutaganda*, (Case No. ICTR-96-3), Appeals Chamber, Judgment, (26/5/2003).

*Prosecutor v Gacumbitsi* (Case No. ICTR-2001-64-T9, Trial Chamber, Judgment, (17/6/2004) (pending in the Appeals Chamber).

*Prosecutor v Bagilishema*, (Case No. ICTR-95-1A-T) Trial Chamber, Judgment, (7/6/2001).

*Prosecutor v Sikirica and another*, (Case No. IT-95-8-T), Trial Chamber, Judgment on Defence Motions to Acquit, (3/9/2001).

*Prosecutor v Semanza*, (Case No. ICTR-97-20-T), Trial Chamber, Judgment and Sentence, (15/5/2003).

*Prosecutor v Rutaganda*, (Case No. ICTR-96-3). Trial Chamber, Judgment, (6/12/1999).

*Prosecutor v Serushago* (Case No. ICTR-98-39-S), Trial Chamber, Sentence, (2/2/1999).

*Trial of the Major War Criminals before the International Military Tribunal, Nuremberg*, 14 /11-1/10/1946, Official Documents (1947).

## **Reports**

AEGIS Trust 'Darfur: Management of a genocidal crisis' Summary Report No. SO1/04 (AEGIS) (2004).

Congressional Research Service 'Sudan: The Darfur crisis and the status of the North-South negotiations' Report for Congress (CRS Report), Order Code RL 32643, (22/10/2004).

Council on Foreign Relations 'Giving meaning to never again', Council Special Report No.5, 2004, available at <[www.cfr.org](http://www.cfr.org)> (accessed 1/5/2005).

Final Report of the Commission of Experts established pursuant to Security Council Res. 935 (1994), U.N. Doc.S/1994/1405, (9/12/1994).

Fourth Report on the Draft Code of Offences against the Peace and Security of Mankind, by Mr Doudou Thiam, U.N. Doc.A/CN.4/398.

House of Commons 'Sudan: Conflict in Darfur' Research Paper 04/51(23/6/2004), available at <<http://hcll.hcllibrary.parliament.uk/notes/iads/snua-02155.pdf>> (accessed 1/3/2005).

Human Rights Watch 'Darfur destroyed; Ethnic cleansing by Government and Militia forces in Western Sudan' (HRW Report) May 2004, Vol.16 No.6 (A).

Human Rights Watch 'Darfur in Flames: Atrocities in Western Sudan' Vol. 16. No. 5 (A) April 2004.

ICG Africa 'Darfur Rising: Sudan's new crisis' Report No. 76, (25/5/2005).

International Crisis Group (ICG) Africa 'Sudan: Now or Never in Darfur' Report No.80, (23/5/2004).

International Law Commission Report, 1996. Draft Code of Crimes against the Peace and Security of Mankind. Text adopted by the International Law Commission at its 48<sup>th</sup> Sess., 1996 and submitted to the General Assembly as part of the Commission's Report covering the work of that session, U.N. Doc.A/51/10 ('ILC Report 1996').

Médicins Sans Frontières (MSF) 'Humanitarian situation in Darfur, Sudan-MSF Statement to the UN Security Council', MSF Reports 24/5/2004, available at <<http://www.msf.org>> (accessed 30/5/2005).

Physicians for Human Rights (PHR Report) 'PHR calls for intervention to save lives in Sudan: Field team compiles indicators of genocide' (23/6/2004).

Report by the International Initiative for Justice (IIJ) 'Threatened Existence: A Feminist Analysis of the Genocide in Gujarat', December 2003, ch. 7.

Report of the African Commission on Human and People's Rights Fact-Finding Mission to Sudan in the Darfur Region, 8-18/7/2004 (Report of the African Commission).

Report of the Chairperson of the Commission on the Situation in the Darfur Region of the Sudan, Peace and Security Council of the AU, PSC/AHG/4 (XXIII), 23<sup>rd</sup> meeting, 10-11/1/2005.

Report of the International Commission of Inquiry on Darfur to the UN Secretary- General, 25/1/2005, Geneva. Submitted pursuant to the UN Security Council Resolution 1564(2004) 1-176 (Report of ICID), available at <[http://www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)> (accessed 11/10/2005).

Report of the Pan-African Parliament Fact Finding Mission on Darfur, Sudan, AU/PAP/RPT/CIRCR.CTTEE, 23/2/2005, Pan-African Parliament, 3<sup>rd</sup> Ordinary session, 29/3-11/4/2005(Report of the Pan-African Parliament).

Report of the Prosecutor of the ICC to the Security Council, Pursuant to UN Security Council Resolution 1593 (2005).

Report of the Secretary-General on Sudan pursuant to paragraphs 6, 13 and 16 of Security Council Resolution 1556(2004), paragraph 15 of Resolution 1564 (2004) and paragraph 17 of Resolution 1574(2004), 4 March 2005, S/2005/140.

Report of the Secretary-General on Sudan, 31 January 2005 UN Security Council, S/2005/57.

Report of the Special Adviser on the Prevention of Genocide (Juan E. Mendez): Visit to Darfur, Sudan 19 – 26 September 2005, (4 October 2005).

Report of the UK Parliament, House of Commons Select Committee on International Development, 5<sup>th</sup> Report, 30/3/2005, <[http://www.publications.parliament.uk/pa/cm200405/cmin\\_tdev/67/67i.pdf](http://www.publications.parliament.uk/pa/cm200405/cmin_tdev/67/67i.pdf)> (accessed 23/9/2005).

Report of the UN High Commissioner for Human Rights and Follow-up to the World Conference on Human Rights, 'Situation of Human rights in the Darfur region of the Sudan' 7/5/2004, E/CN.4/2005/3.

Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide. Study on Genocide by the UN Human Rights Commission, 1985. Prepared by Benjamin Whitaker, U.N. Doc.E/CN.4/Sub.2/1985/6, (2/7/1985).

Study of the Question of the Prevention and Punishment of the Crime of Genocide, prepared by Nicodème Ruhashyamiko, 4/7/1978 .U.N. Doc.E/CN.4/ Sub.2/416.

US Department of State 'Documenting atrocities in Darfur' State Publication 11182, Bureau of Democracy, Human rights, Labour and the Bureau of Intelligence, 2004, available at <<http://www.state.gov/g/drl/rls/36028.htm>>(accessed 20/5/2005).

### **Decisions, Communiqués and Resolutions**

'Darfur Genocide Accountability Act of 2005', 109<sup>th</sup> Congress, 1<sup>st</sup> session, House of Representatives 1424, (17/3/2005), <<http://www.theorator.com/bills109/hr1424.html>> (accessed 5/7/2005).

African Union. Peace and Security Council, 23<sup>rd</sup> meeting, Communiqué PSC/AHG/Comm. (XXIII), 10/1/2005

AU decision on Darfur, Assembly of the African Union, 3<sup>rd</sup> Ordinary Session, 6-8 July 2004, Addis Ababa, Ethiopia (Assembly/AU/Dec.54 (III).

Communiqué of the 12th Meeting of the Peace and Security Council, The Peace and Security Council (PSC) of the AU, Meeting in its 12<sup>th</sup> meeting, at ministerial level, 4/7/2004, PSC/MIN/ Comm. (XII).

Communiqué of the Peace and Security Council of the AU, PSC/PR/Comm. (V), 5<sup>th</sup> session, Addis Ababa (13/4/2004).

Senate of the United States of America (S.Con.Res.124), 108<sup>th</sup> Congress, 2<sup>nd</sup> Session, 13/7/2004; S.Con.Res 133, introduced and passed by Senate on 22/7/2004.

The African Commission on Human and Peoples' Rights Resolution 74 (XXXVII) 05: Resolution on the Human Rights Situation in Darfur, Sudan.

The United States of America House of Congress Resolution 467 declaring genocide in Darfur, Sudan, at its 108th Congress, 2<sup>nd</sup> Session (In the House of Representatives), 24/6/2004.

UN General Assembly Res. 96(I), 1<sup>st</sup> Sess., 188-89, U.N. Doc. A/64/Add.1 (1949).

UN General Assembly Resolution 46/242 (1992), A/RES/46/242. 91<sup>st</sup> Plenary Meeting, 25/8/1992

UN General Assembly Resolution 47/121 (1992), A/RES/47/121, 91<sup>st</sup> Plenary Meeting, 18/12/1992.

UN General Assembly Resolution 47/80 (1992), A/RES/47/80. 89<sup>th</sup> Plenary Meeting, 16/12/1992.

UN Security Council Resolution 1556 (2004), S/RES/1556(2004). Adopted by the Security Council at its 5015<sup>th</sup> meeting, on 30/7/2004.

UN Security Council Resolution 1574(2002), S/RES/1574(2004). Adopted by the Security Council at its 5082<sup>nd</sup> meeting, on 19/11/2004.

UN Security Council Resolution 1588(2005), S/RES/1588(2005). Adopted by the Security Council at its 5143<sup>rd</sup> meeting, on 17/3/2005.

UN Security Council Resolution 1591(2005), S/RES/1591(2005). Adopted by the Security Council at its 5153<sup>rd</sup> meeting, on 29/3/2005.

UN Security Council Resolution 1593, S/RES/1593(2005). Adopted by the Security Council at its 5158<sup>th</sup> meeting, on 31/3/2005.

UN Security Council Resolution 771 (1992), S/RES/771 (1992). Adopted by the Security Council at its 3106<sup>th</sup> meeting, on 13/8/1992.

UN Security Council Resolution 780 (1992), S/RES/780 (1992). Adopted by the Security Council at its 3119<sup>th</sup> meeting, on 6/10/1992.

UN Security Council Resolution 808 (1993), S/RES/808 (1993). Adopted by the Security Council at its 3175<sup>th</sup> meeting, on 22/2/1993.

UN security Council Resolution 820 (1993), S/RES/820 (1993). Adopted by the Security Council at its 3200<sup>th</sup> meeting, on 17/4/1993.

UN Security Council Resolution 827 (1993), S/RES/827 (1993). Adopted by the Security Council at its 3217<sup>th</sup> meeting, on 25/5/1993.

UN Security Council Resolution 941 (1994), S/RES/941 (1994). Adopted by the Security Council at its 3428<sup>th</sup> meeting, on 23/9/1994.

### **International and municipal legal instruments**

Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by the UN General Assembly, U.N.G.A. Res. 260 A (III) on 9/12/1948. Entered into force on 12/1/1951; 78 U.N.T.S. 277.

Geneva Conventions for the Protection of Victims of Armed Conflict, Conventions I-IV, adopted 12/09/1949, 75 UNTS 31, 85,135, 287. Entered into force 21/10/1950.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 UNTS 3. Entered into force 7/12/1978.

Protocol Additional to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609. Entered into force 7/12/1978.

Race Relations (Amendment) Act 2000 (UK).

Regulation No. 2000/15 On the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, United Nations Transitional Administration in East Timor, UNTAET/REG/2000/15(6/6/2000), <<http://www.un.org/peace/etimor/untaetR/Reg0015E.pdf>> (accessed 20/5/2005).

Rome Statute of the International Criminal Court. Adopted by the UN Diplomatic Conference of Plenipotentiaries on the Establishment of the ICC, at Rome, on 17/7/1998. Entered into force on 1/7/2002.

Statute of the International Criminal Tribunal for Rwanda, Security Council Res. 955, 49<sup>th</sup> Sess., U.N. Doc. S/RES/955(1994).

Statute of the International Criminal Tribunal for the Former Yugoslavia. Adopted pursuant to Security Council Res. 827, 48<sup>th</sup> Sess., 3217<sup>th</sup> meeting, U.N. Doc S/RES/827 (1993).

Statute of the Iraq Special Tribunal, Established by the Coalition Provisional Authority. Became effective on 10/12/2003, <[http://www.cpa-iraq.org/human\\_rights/Statute.htm](http://www.cpa-iraq.org/human_rights/Statute.htm)> (accessed 14/3/2005).

Statute of the Special Court for Sierra Leone. Security Council Res. 246 (2002), 57<sup>th</sup> Sess; UN. Doc.S/2002/246.

The Charter of the International Military Tribunal, at Nuremberg, on 8/8/1945, 82 U.N.T.S. 284.

Vienna Convention on the Law of Treaties. Adopted on (22/5/ 1969), U.N.G.A Res. 2166(XXI); 2287(XXII). Entered into force on 27/1/1980, 1155 U.N.T.S.331.

### **Articles in newspapers**

Birchall, J 'Thousands die as world defines genocide: The international community's response to the crisis in Sudan may depend on how the Darfur tragedy is classed' *Financial Times*, London Tuesday 6 July 2004, London Edition 1.

Evans, L 'The people who cover up genocide' *UCLA International Institute*, 3 March 2005.

Jafari, J and Williams, P R 'The UN and Genocide in Darfur' *Sudan Tribune*, Sunday, 20 March 2005.

Power, S 'Dying in Darfur- Can the ethnic cleansing in Sudan be stopped?' *The New Yorker*, 30 August 2004, < [http://www.newyorker.com/fact/content/?040830fa\\_fact1](http://www.newyorker.com/fact/content/?040830fa_fact1)> (accessed 20/10/2005).

### **Statements**

Anti-Slavery International, 'Statement on the current human rights situation in Darfur, Sudan. Delivered at the 35<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia on 23/5/2004. <<http://www.antislavery.org/archive/submission/Africacommission2004-Darfur.htm>> (accessed 11/4/2005).

Statement by the Acting High Commissioner for Human Rights, Mr. Bertrand Ramcharan, to High-Level Donors's Meeting on Darfur, Geneva, 3/6/2004.

Statement by Ms. Louis Arbour, High Commissioner for Human Rights to the Security Council on the International Commission of Inquiry on Darfur, New York, 16/2/2005.

Statement of the Government of Sudan to the 61<sup>st</sup> session of UN Commission on Human Rights, Text of Statement by Ali Osman Yassin, Sudanese Minister of Justice, Head of the Sudan Delegation to 61<sup>st</sup> annual session of the Commission on Human Rights in Geneva, on 14 March 2005: Sudan Tribune, Wednesday, 16/3/2005, available at <<http://www.sudantribune.com/article.php3?idarticle=8552>> (accessed 7/10/2005).

Statement of the President of the Security Council 'Security Council Expresses Grave Concern over deteriorating situation in Darfur Region of Sudan' 4978<sup>th</sup> Meeting (Night), S/PRST/2004/18.

Statement of the UN-Acting High Commissioner for Human Rights to the Security Council, 7/5/2004.

'On Darfur' Trans Africa Forum Statement, Trans Africa Forum: Justice for the African World, Washington DC, 24/6/2004.

Open Letter to the President of Nigeria as Chairman of the African Union regarding Sudan referral to the ICC, Amnesty International, AI Index: IOR 63/001/2005, of 10/2/2005.

US Department of State 'The crisis in Darfur', <<http://www.state.gov/secretary/former/powell/remarks/36032.htm>>(accessed 20/5/2005).

Written Statement submitted by the African Society of International and Comparative Law (ASICL) to the UN Commission on Human Rights 'Question of the violation of human rights and fundamental freedoms in any part of the world', 11/3/2004, (E/CN.4/2004/NGO/203).

### **Unpublished papers and Press releases**

Austin, G and Koppelman, B 'Darfur and genocide: Mechanisms for Rapid response: An end to impunity' (2004) The Foreign Policy Centre: London, available at <<http://fpc.org.uk/fsblob/285.pdf>> (accessed 30 May 2005).

Bhoke, C & Dawit, B (2005) 'The concepts of joint criminal enterprise and those who bear the greatest responsibility' (unpublished paper), Centre for Human Rights, University of Pretoria.

'Prosecutor of the ICC opens investigations in Darfur' available at <[http://www.icc-cpi.int/pressrelease\\_details&id=107.html](http://www.icc-cpi.int/pressrelease_details&id=107.html)> (accessed 7/10/2005).

UN Secretary-General Action Plan to prevent Genocide, Geneva, 7/4/2004, Press Release SG/SM/9197 AFR/893, HR/CN/1077.

## Websites

- United Nations <<http://www.un.org> > (accessed 20/10/2005).
- International Court of Justice <<http://www.icj-cij.org> > (accessed 20/10/2005).
- International Criminal Court <<http://www.icc-cpi.int>> (accessed 20/10/2005).
- International Criminal Tribunal for the Former Yugoslavia <<http://www.un.org/icty>> (accessed 20/10/2005).
- International Criminal Tribunal for Rwanda <<http://www.icttr.org>> (accessed 20/10/2005).
- Special Court for Sierra Leone <<http://www.sc-sl.org>> (accessed 20/10/2005).
- The Iraq Special Tribunal <<http://www.iraq-ist.org/home.htm>> (accessed 20/10/2005).
- The African Union <<http://www.africa-union.org>> (accessed 20/10/2005).
- Human Rights Watch <<http://www.hrw.org>> (accessed 20/10/2005).
- International Crisis Group <<http://www.crisisgroup.org>> (accessed 20/10/2005).
- Genocide Watch <<http://www.genocidewatch.org>> (accessed 20/10/2005).
- International Association of Genocide Scholars <<http://www.isg-iags.org/index.html>> (accessed 20/10/2005).



## **APPENDIX 1**

### **UNITED STATES OF AMERICA CONGRESS RESOLUTION 467 DECLARING GENOCIDE IN DARFUR, SUDAN**

108th CONGRESS

2d Session

**H. CON. RES. 467**

HCON 467 IH

Declaring genocide in Darfur, Sudan

#### **IN THE HOUSE OF REPRESENTATIVES**

**JUNE 24, 2004**

Mr. PAYNE (for himself, Mr. CUMMINGS, Mr. JEFFERSON, Mr. WYNN, Ms. LEE, Ms. MAJETTE, Mrs. CHRISTENSEN, Mr. DAVIS of Illinois, Ms. WETERS, Mr. JACKSON of Illinois, Ms. NORTON, Mr. SCOTT of Georgia, Ms. MILLENDER-MCDONALD, Mr. DAVIS of Alabama, Mr. RUSH, Mr. TOWNS, Ms. SCHAKOWISKY, Mr. FATTAH, Mr. OWENS, Mr. RANGEL, Mr. THOMPSON of Mississippi, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. WATT, Mr. MEEKS of New York, Ms. CORRINE BROWN of Florida, Ms. WATSON, Ms. JACKSON-LEE of Texas, Mr. LEWIS of Georgia, Mr. CLYBURN, Mr. CONYERS, Mr. SCOTT of Virginia, Mr. FORD, Ms. KILPATRICK, Mr. TANCREDO, and Mr. BISHOP of Georgia) submitted the following concurrent resolution; which was referred to the Committee on International Relations

#### **CONCURRENT RESOLUTION**

Declaring genocide in Darfur, Sudan.

Whereas Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide (signed at Paris on December 9, 1948) states that 'the Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish';

Whereas Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide declares that 'in the present Convention, genocide means any of the following acts committed with the 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; and (e) forcibly transferring children of the group to another group';

Whereas Article 3 of the Convention on the Prevention and Punishment of the Crime of Genocide affirms that '[the] following acts shall be punishable: (a) genocide; (b) conspiracy to commit genocide; (c) direct and public incitement to commit genocide; (d) attempt to committed genocide; and (e) complicity in genocide';

Whereas in Darfur, Sudan, an estimated 30,000 innocent civilians have been brutally murdered, more than 130,000 people have been forced from their homes and have fled to neighbouring Chad, and more than 1,000,000 people have been internally displaced; and

Whereas in March 2004 the United Nations Resident Humanitarian Coordinator stated: '[T]he war in Darfur started off in a small way last year but it has progressively gotten worse. A predominant feature of this is that the brunt is being borne by civilians. This includes vulnerable women and children . . . The violence in Darfur appear to be particularly directed at a specific group based on their ethnic identity and appears to be systemized.' Now, therefore, be it

*Resolved by the House of Representatives (the Senate concurring), That Congress--*

- (1) declares that the atrocities unfolding in Darfur, Sudan, are genocide;
- (2) reminds the Contracting Parties to the Convention on the Prevention and Punishment of the Crime of Genocide (signed at Paris on December 9, 1948), particularly the Government of Sudan, of their legal obligations under the Convention;
- (3) declares that the Government of Sudan, as a Contracting Party, has violated the Convention on the Prevention and Punishment of the Crime of Genocide;
- (4) deplores the failure of the United Nations Human Rights Commission to take appropriate action with respect to the crisis in Darfur, Sudan, particularly the failure by the Commission to support United States-sponsored efforts to strongly condemn gross human rights violations committed in Darfur, and calls upon the United Nations and the United Nations Secretary General to assert leadership by calling the atrocities being committed in Darfur by their rightful name: 'genocide';
- (5) calls on the member states of the United Nations, particularly member states from the African Union, the Arab League, and the Organization of the Islamic Conference, to undertake measures to prevent the genocide in Darfur, Sudan, from escalating further, including the imposition of targeted sanctions against those responsible for the atrocities;

(6) urges the Administration to call the atrocities being committed in Darfur, Sudan, by their rightful name: 'genocide';

(7) commends the Administration's leadership in seeking a peaceful resolution to the conflict in Darfur, Sudan, and in addressing the ensuing humanitarian crisis, including the visit of Secretary of State Colin Powell to Darfur in June 2004 to engage directly in efforts to end the genocide, and the provision of nearly \$140,000,000 to date in bilateral humanitarian assistance through the United States Agency for International Development;

(8) commends the President for appointing former Senator John Danforth as Envoy for Peace in Sudan on September 6, 2001, and further commends the appointment of Senator Danforth as United States Ambassador to the United Nations;

(9) calls on the Administration to continue to lead an international effort to stop genocide in Darfur, Sudan;

(10) urges the Administration to seriously consider multilateral or even unilateral intervention to stop genocide in Darfur, Sudan, should the United Nations Security Council fail to act;

(11) calls on the Administration to impose targeted sanctions, including visa bans and the freezing of assets of the Sudanese National Congress and affiliated business and individuals directly responsible for the atrocities in Darfur, Sudan; and

(12) calls on the United States Agency for International Development to establish a Darfur Resettlement, Rehabilitation, and Reconstruction Fund so that those individuals driven off their land may return and begin to rebuild their communities.

Passed by the House of Representatives, July 22, 2004.

## **APPENDIX 2**

### **A BILL TO IMPOSE SANCTIONS AGAINST PERPETRATORS OF CRIMES AGAINST HUMANITY AND GENOCIDE IN DARFUR, SUDAN.**

109<sup>th</sup> CONGRESS

1<sup>st</sup> Session

#### **H. R. 1424**

To impose sanctions against perpetrators of crimes against humanity and genocide in Darfur, Sudan, and for other purposes.

#### **IN THE HOUSE OF REPRESENTATIVES**

**March 17, 2005**

Mr. PAYNE (for himself, Mr. TANCREDO, Mr. MEEKS of New York, Ms. LEE, Mr. CAPUANO, Mr. CONYERS, Mr. RANGEL, Mr. PITTS, Mr. THOMPSON of Mississippi, and Mr. RUSH) introduced the following bill; which was referred to the Committee on International Relations

---

#### **A BILL**

To impose sanctions against perpetrators of crimes against humanity and genocide in Darfur, Sudan, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Darfur Genocide Accountability Act of 2005'.

#### **SEC. 2. DEFINITIONS.**

In this Act:

- (1) **APPROPRIATE CONGRESSIONAL COMMITTEES-** The term 'appropriate congressional committees' means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(2) GOVERNMENT OF SUDAN- The term 'Government of Sudan' means the National Congress Party-led government in Khartoum, Sudan, or the successor Government of National Unity to be formed pursuant to the Comprehensive Peace Agreement signed by the Government of Sudan and the Sudan People's Liberation Movement in Nairobi, Kenya on January 9, 2005. Measures against the Government of Sudan, as defined in this paragraph, shall not apply to the Government of South Sudan (GOSS) or to areas formerly under the control of opposition groups.

(3) MEMBER STATES- The term 'member states' means the member states of the United Nations.

(4) SUDAN NORTH-SOUTH PEACE AGREEMENT- The term 'Sudan North-South Peace Agreement' means the Comprehensive Peace Agreement signed by the Government of Sudan and the Sudan People's Liberation Movement/Army on January 9, 2005.

### **SEC. 3. FINDINGS.**

Congress makes the following findings:

(1) On July 22, 2004, the House of Representatives and the Senate declared that the atrocities occurring in Darfur, Sudan, are genocide.

(2) On September 9, 2004, Secretary of State Colin L. Powell stated before the Committee on Foreign Relations of the Senate, '[w]hen we reviewed the evidence compiled by our team, along with other information available to the State Department, we concluded that genocide has been committed in Darfur and that the Government of Sudan and the [Janjaweed] bear responsibility--and genocide may still be occurring'.

(3) On July 30, 2004, the United Nations Security Council passed Security Council Resolution 1556, calling upon the Government of Sudan to disarm the Janjaweed militias and to apprehend and bring to justice Janjaweed leaders and their associates who have incited and carried out violations of human rights and international humanitarian law and carried out other atrocities in the Darfur region.

(4) On September 18, 2004, the United Nations Security Council passed Security Council Resolution 1564, determining that the Government of Sudan had failed to meet its obligations under Security Council Resolution 1556, calling for a military flight ban in and over the Darfur region, demanding the names of Janjaweed militiamen disarmed and arrested for verification, establishing an International Commission of Inquiry into violations of international humanitarian and human rights laws, and threatening sanctions

should the Government of Sudan fail to fully comply with Security Council Resolutions 1556 and 1564, such as actions to affect Sudan's petroleum sector.

(5) In late January 2005, the International Commission of Inquiry on Darfur submitted a 176-page report to Secretary General Kofi Annan detailing the atrocities committed by the Government of Sudan and its Janjaweed militia allies.

(6) The Commission declared that 'based on thorough analysis of the information gathered in the course of the investigations, the Commission established that the Government of Sudan and the Janjaweed are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law.'

(7) The Commission further stated that Sudanese Government officials and other individuals may have committed genocidal acts, and submitted a sealed document with 51 suspects for prosecution by the International Criminal Court (ICC).

#### **SEC. 4. SENSE OF CONGRESS.**

It is the sense of Congress that--

(1) the atrocities unfolding in Darfur, Sudan, are genocide;

(2) the Comprehensive Peace Agreement between the Government of Sudan and the Sudan People's Liberation Movement/Army must be fully and unconditionally implemented and a new coalition government established under such Agreement;

(3) the African Union must amend the mandate of the African Union Mission in the Sudan to focus directly on protecting civilians from attacks and to neutralize the Janjaweed militia and other militia groups engaged in attacks against civilians;

(4) the United Nations or NATO should deploy at least 10,000 troops to the Darfur region to augment the African Union Mission in the Sudan;

(5) the United States strongly condemns attacks on humanitarian workers and calls on all forces in Darfur, including forces of the Government of Sudan, all militia, and forces of the Sudan Liberation Army/Movement and the Justice and Equality Movement, to refrain from such attacks;

(6) the President should appoint a Presidential Special Envoy to Sudan--

(A) to seek comprehensive peace throughout Sudan;

(B) to support the implementation of the Sudan North-South Peace Agreement;

- (C) to find ways to bring stability and peace to Darfur;
  - (D) to address instability throughout Sudan; and
  - (E) to address the related crisis in Northern Uganda;
- (7) the United States should support accountability through action by the United Nations Security Council, pursuant to chapter VII of the Charter of the United Nations, to ensure the prompt prosecution and adjudication in a competent international court of justice or the United States-proposed Sudan Tribunal of individuals responsible for war crimes, crimes against humanity, and genocide; and
- (8) the President of the United States shall instruct the United States Permanent Representative to the United Nations to demand--
- (A) the extension of the military embargo to the Government of Sudan, as called for in paragraphs 7 through 9 of United Nations Security Council Resolution 1556;
  - (B) the freezing of property and assets of government and military officials and their family members; Janjaweed leaders; and individuals engaged in planning, directing, and implementing of the atrocities in Darfur;
  - (C) that member states significantly reduce the number and the level of the staff at Sudanese diplomatic missions and consular posts and restrict or control the movement within their territory of all such staff who remain;
  - (D) steps to restrict the entry into or transit through their territory of members of the Government of Sudan, military officials of that Government, militia leaders, and other individuals involved in the planning, directing, and enforcing measures against civilians; and
  - (E) steps to discourage international and regional organizations from convening any conference in Sudan.

## **SEC. 5. IMPOSITION OF SANCTIONS.**

(a) Blocking of Assets- Beginning on the date that is 30 days after the date of enactment of this Act or 30 days after the formation of the National Unity Government of Sudan, the President shall, consistent with the authorities granted in the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), block the property and assets of officials of the Government of Sudan and their family members; military officials and their family members; individuals implicated in the atrocities in Darfur as well as businesses partially or fully controlled by the above

aforementioned individuals; and property and assets controlled by the National Congress Party.

(b) Visa Restriction- Notwithstanding section 428(b) of the Homeland Security Act of 2002 (6 U.S.C. 236(b)), the Secretary of State shall prohibit the granting of a visa to--

- (1) officials of the Government of Sudan implicated in the atrocities in Darfur;
  - (2) officials of the military of Sudan implicated in the atrocities in Darfur;
  - (3) militia members or other individuals implicated in the atrocities in Darfur;
- and
- (4) family members of an individual described in paragraphs (1), (2), and (3).

(c) Travel Restrictions- The Secretary of State shall take measures to significantly reduce the number and the level of the staff at the Sudanese diplomatic mission in Washington, D.C., and restrict or control the movement within the United States of all such staff who remain.

(d) Restriction on International Conferences- The Secretary of State shall instruct the United States Permanent Representative to the United Nations to oppose any conference organized by United Nations member agencies or other international and regional organizations from being held in Sudan.

(e) Reporting Requirement- Not later than 30 days after a decision to freeze the property or assets of, or deny a visa or entry to, any person under this section, the President shall report the name of such person to the appropriate congressional committees.

## **SEC. 6. AUTHORIZATION TO USE FORCE TO STOP GENOCIDE IN DARFUR, SUDAN.**

(a) Authorization to Use Force- The President is authorized to use all necessary means, including use of the United States armed forces, to stop genocide in Darfur, Sudan, consistent with the Convention on the Prevention and Punishment of the Crime of Genocide, to enforce United Nations Security Council Resolutions 1556 and 1564, and in response to the Comprehensive Sudan Peace Act of 2004.

(b) Authorization to Neutralize Perpetrators of the Violence- The President is authorized and strongly encouraged to consider utilizing unmanned armed planes and other military assets to neutralize--

- (1) Janjaweed or other militia groups intent in targeting civilians;
- (2) helicopters or fixed aircraft used to attack civilians or to provide cover and assistance to militia groups; and
- (3) intelligence or military headquarters used to plan and direct attacks against civilians.

(c) No-Fly Zones- The President is authorized to use force to enforce a no-fly zone over the Darfur region by utilizing American military assets, including--



(1) those currently stationed in the Horn of Africa region and/or use of NATO forces;

(2) options that employ technological capabilities to intercept and jam communications between the Government of Sudan and the Janjaweed; and

(3) cost-effective equipment such as aerostats, airships, or unmanned aerial vehicles to achieve situational awareness.

(d) Port Entry Denial- The President is authorized to deny port entry to the United States to cargo ships or oil tankers engaged in business or trade activities in the oil sector of Sudan and/or involved in the shipment of goods for use by the Sudan Armed Forces.

## **SEC. 7. PROHIBITION ON TRADING IN UNITED STATES CAPITAL MARKETS.**

(a) Prohibition- The President shall exercise the authorities he has under the International Emergency Economic Powers Act (without regard to the requirements set forth in section 202 of that Act) to prohibit any entity engaged in any commercial activity in Sudan--

(1) from raising capital in the United States; or

(2) from trading its securities (or depository receipts with respect to its securities) in any capital market in the United States.

(b) Penalties- The penalties under section 206 of the International Emergency Economic Powers Act shall apply to violations under subsection (a) to the same extent as such penalties apply to violations under that Act.

(c) Waiver- The President may waive the application of sanctions in section 5 and this section if the President determines and certifies to the appropriate congressional committees that such a waiver is in the national interest of the United States.

(d) Notification of Waivers of Sanctions- Not later than 30 days before waiving the provisions of any sanctions currently in force with regard to Sudan, the President shall submit to the appropriate congressional committees a report describing the waiver and the reasons therefor.

## **SEC. 8. REPORTS TO CONGRESS.**

(a) Disclosure of Business Activities in Sudan-

(1) ANNUAL REPORT TO CONGRESS- The Secretary of the Treasury shall, not later than 6 months after the date of the enactment of this Act, and not later than the end of each 1-year period thereafter, submit to the Congress a report that includes-

(A) the identity of all entities that are engaged in commercial activity in Sudan;

(B) the nature and extent of that commercial activity in Sudan, including any plans for expansion or diversification;

(C) the identity of all agencies of the Sudanese Government with which any such entity is doing business; and

(D) the relationship of the commercial activity to any violations of religious freedom and other human rights in Sudan.

(2) DISCLOSURE TO THE PUBLIC- The Secretary of the Treasury shall publish or otherwise make available to the public each report submitted under subsection (a).

(b) Conforming Amendment- Section 8(b) (1) of the Sudan Peace Act (50 U.S.C.1701 note) is amended to read as follows:

“(1) The best estimates of the extent of aerial bombardment of, as well as the extent of militia activity against, civilian centres in Sudan, by the Government of Sudan, including targets, frequency, and best estimates of damage.”.

## APPENDIX 3

### COMMUNIQUÉ OF THE TWELFTH MEETING OF THE PEACE AND SECURITY COUNCIL OF THE AFRICAN UNION

PSC/MIN/Comm. (XII)

#### PEACE AND SECURITY COUNCIL

12<sup>TH</sup> MEETING

4 JULY 2004

ADDIS ABABA, ETHIOPIA

#### COMMUNIQUÉ OF THE TWELFTH MEETING OF THE PEACE AND SECURITY COUNCIL

The Peace and Security Council (PSC) of the African Union (AU), meeting in its twelfth meeting, at ministerial level, on 4 July 2004, adopted the following communiqué:

##### A. ON THE CRISIS IN THE DARFUR REGION OF THE SUDAN:

**Council,**

1. **Reiterates** its serious concern over the prevailing situation in the Darfur Region of the Sudan, particularly the humanitarian crisis and the continued reports of violations of human rights, including attacks against civilians committed by the Janjaweed militia, and **reiterates** the need to bring to justice all those responsible for human rights violations in Darfur;

2. **Notes** that, even though the crisis in Darfur is grave, with unacceptable level of deaths, human suffering and destructions of homes and infrastructure, the situation cannot be defined as a genocide. Council **further notes** that the crisis should be addressed with urgency to avoid further escalation;

3. **Welcomes** the measures taken by the Government of the Sudan (GoS) to protect the civilian population, facilitate the work of the humanitarian agencies and NGOs and provide them with unrestricted access to the affected populations. Council **welcomes** the commitment made the GoS to disarm and neutralize the Janjaweed militia, and **urges** the GoS to follow through with all these commitments;

4. **Urges** the Government of the Sudan, the Sudan Liberation Movement (SLM) and the Justice and Equality Movement (JEM) to fulfil the commitments made in the Humanitarian

Ceasefire Agreement signed on 8 April 2004 and to refrain from any further actions that could constitute violations of the letter and spirit of all the Agreements signed so far;

5. **Further urges** the Sudanese authorities to assess the extent of the destruction related to the conflict in Darfur and to consider the ways and means of compensating the affected populations;

6. **Notes with satisfaction** the leadership role being played by the AU in addressing the crisis in Darfur and **urges** the international community to continue to support these efforts;

7. **Commends** President Deby of Chad for his mediation efforts, undertaken with the support of the AU Commission and other partners. Council **calls** on all concerned to vigorously pursue their efforts;

8. **Welcomes** the establishment of the Ceasefire Commission (CFC) in El Fashir, as of 9 June 2004, and the partial deployment of the AU Military Observers in the Darfur Region, and **urges** the Commission to expedite the process, including the deployment of the Protection Elements within the framework of the Agreement of 28 May 2004 on the Establishment of the CFC and Deployment of Observers. Council **further urges** the parties to extend full cooperation to the CFC and the Observer Mission in order to facilitate the ongoing efforts to restore lasting peace in Darfur;

9. **Further welcomes** the convening of the first meeting of the Joint Commission provided for in the Humanitarian Ceasefire Agreement, in N'djamena, on 2 July 2004, and **urges** the Sudanese parties to participate fully in the meeting scheduled on 15 July 2004, at the AU Headquarters, to discuss political issues with the view of reaching a Comprehensive Agreement;

10. **Expresses** serious concern over the impact of the conflict in Darfur on the stability of Chad and the rest of the region and, in this regard, **welcomes** the decision of the Government of the Sudan and Chad to deploy joint patrols along their common border, with a view to enhancing security. Council **expresses** the disposition of the AU to support such efforts.

## **APPENDIX 4**

### **THE AFRICAN UNION DECISION ON DARFUR**

#### **ASSEMBLY OF THE AFRICAN UNION**

**Third Ordinary Session**

**6-8 July 2004**

**Addis Ababa, ETHIOPIA**

#### **DECISION ON DARFUR**

**The Assembly:**

**1. REITERATES** its serious concern over the prevailing situation in the Darfur Region of The Sudan, particularly the Humanitarian crisis and the continued reports of violations of human rights, including attacks against civilians committed by the Janjaweed militia and other non regular armed groups, and reiterates the need to bring to justice all those responsible for human rights violations in Darfur;

**2. NOTES THAT**, even though the humanitarian situation in Darfur is serious, it can not be defined as a genocide. The Assembly further notes that the crisis should be addressed with utmost urgency to avoid further escalation;

**3. WELCOMES** the measures taken by the GOS to protect the civilian populations, facilitate the work of the humanitarian agencies and NGOs and provide them with unrestricted access to the affected populations. The Assembly welcomes the commitment by the GOS to disarm and neutralize the janjaweed militia and other armed groups and urges the GOS to follow through these commitments;

**4. STRESSES** that the African Union should continue to lead these efforts to address the crisis in Darfur and that the International Community should continue to support this efforts;

**5. COMMENDS** President Deby of Chad for his mediation efforts, undertaken with the support of the AU Commission and other partners. The Assembly calls on all concerned to vigorously pursue their efforts;

**6. WELCOMES** the establishment of the cease-fire commission in El Fashir as of 9 June 2004 and the partial deployment of the AU military observers in the Darfur Region and urges the Commission to expedite the process, including the deployment of the protection force.

**7. DECIDES** to increase the number of AU Observers to a minimum of 80 and decides that the protection force should be deployed immediately. In this regard, the Assembly welcomes the willingness of the GOS to cooperate with the AU Protection Force and its commitment to provide overall protection to the Mission. The Assembly urges the Member States concerned to contribute Observers and troops for the AU Mission as a matter of urgency;

**8. AGREES** that the rebel forces should be cantoned at mutually agreed sites and that the militia and all other outlaw groups should be disarmed by the GOS, and that these two operations shall be carried out simultaneously and monitored by the AU Mission;

**9. UNDERLINES** the centrality of a political solution and agrees that the political dialogue should resume on the scheduled date of 15 July 2004, at the AU Headquarters in Addis Ababa, with the view to reaching a political agreement. Such an Agreement would create conditions for the convening of the all party conference provided for in the N'Djamena Humanitarian Cease-Fire Agreement. The Assembly urges all parties to the meeting to participate at the highest level, to ensure that decision will be reached. In this respect, the Assembly urges the Commission with the assistance of Member States and other partners, to ensure that the rebel movements participate in the meeting at the highest level, to avoid delays;

**10. URGES** the parties to strictly respect the provisions of the Cease-fire agreement and create conditions for the speedy and urgent return of refugees and IDPs. The Assembly urgently appeals to the International Community and Member States to extend full support to this process by providing the much needed humanitarian assistance;

**11. ACKNOWLEDGES** the Agreement signed between the Government of The Sudan and the United Nations which is consistent with the AU Peace efforts;

**12. REQUESTS** the Chairperson of the Commission to follow this matter as a matter of a priority and report to the Peace and Security Council regularly.

**APPENDIX 5**

**REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY ON DARFUR TO THE  
UNITED NATIONS SECRETARY-GENERAL**

**Pursuant to Security Council Resolution 1564 of 18 September 2004**

**25 January 2005**

Available at <[http://www.un.org/News/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/News/dh/sudan/com_inq_darfur.pdf)> (accessed 21/10/2005).

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